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**SUBSTITUTE HOUSE BILL 3191**

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**State of Washington                      61st Legislature                      2010 Regular Session**

**By** House Finance (originally sponsored by Representatives Hunter, Conway, and Hasegawa)

READ FIRST TIME 03/04/10.

1            AN ACT Relating to modifying Washington state excise tax laws to  
2 create jobs and to preserve funding for education, public safety,  
3 health care, and safety net services for elderly, disabled, and  
4 vulnerable people; amending RCW 82.04.220, 82.04.2907, 82.04.460,  
5 82.32.090, 82.12.020, 82.45.033, 82.45.070, 82.45.080, 82.45.100,  
6 82.45.220, 43.07.390, 82.04.4292, 82.04.423, 82.04.4266, 82.04.250,  
7 82.04.250, 82.04.298, 82.04.334, 82.04.4463, 82.08.806, 82.32.545,  
8 82.32.550, 82.32.630, 82.32.632, 82.45.195, 35.102.150, 48.14.080,  
9 82.08.890, 82.12.890, 82.48.010, 82.48.020, 82.48.030, 82.48.070,  
10 82.48.080, 82.48.110, 82.12.0254, 82.45.010, 82.45.080, 82.32.145,  
11 82.08.0293, 82.12.0293, 82.12.020, 82.04.060, 82.04.190, 82.12.010,  
12 82.12.035, 82.04.060, 82.04.190, 82.04.215, 82.08.02088, 82.12.010,  
13 82.12.020, 82.24.020, 82.24.026, 82.26.010, 82.26.020, 82.26.030,  
14 82.60.020, 82.62.010, 54.28.011, and 82.04.4281; reenacting and  
15 amending RCW 82.45.010, 82.04.260, 82.04.261, 82.04.440, 82.04.360,  
16 82.04.050, 82.08.962, and 82.12.962; adding new sections to chapter  
17 82.04 RCW; adding new sections to chapter 82.32 RCW; adding a new  
18 section to chapter 82.48 RCW; adding a new section to chapter 82.26  
19 RCW; adding a new section to chapter 82.08 RCW; adding a new section to  
20 chapter 82.12 RCW; creating new sections; repealing RCW 82.08.0273,  
21 82.04.44525, 82.04.29001, 82.24.027, and 82.24.028; providing effective

1 dates; providing expiration dates; and declaring an emergency.

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

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

9 **PART I**

10 **Minimum Nexus Standards**

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

26 (2)(a) The legislature also finds that the current cost  
27 apportionment method in RCW 82.04.460(1) for apportioning most service  
28 income has been difficult for both taxpayers and the department to  
29 apply due in large part (i) to the difficulty in assigning certain  
30 costs of doing business inside or outside of this state, and (ii) to  
31 its dissimilarity with the apportionment methods used in other states  
32 for their business activity taxes.

33 (b) The legislature further finds that there is a trend among  
34 states to adopt a single factor apportionment formula based on sales.

1 The legislature recognizes that adoption of a sales factor only  
2 apportionment method has the advantages of simplifying apportionment  
3 and making Washington a more attractive place for businesses to expand  
4 their property and payroll. For these reasons, the legislature adopts  
5 single factor sales apportionment for purposes of apportioning royalty  
6 income and certain service income.

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

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

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

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

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

28 "Engaging within this state" and "engaging within the state," when  
29 used in connection with any apportionable activity as defined in RCW  
30 82.04.460, means that a person generates gross income of the business  
31 from sources within this state, such as customers or intangible  
32 property located in this state, regardless of whether the person is  
33 physically present in this state.

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) The average value of property must be determined by averaging  
32 the values at the beginning and ending of the tax year; but the  
33 department may require the averaging of monthly values during the tax  
34 year if reasonably required to properly reflect the average value of  
35 the taxpayer's property.

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

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

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

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

19 (ii) The definitions in section 106 of this act apply to this  
20 subsection.

21 (e) Notwithstanding anything else to the contrary in this  
22 subsection, property counting toward the thresholds in subsection  
23 (1)(c)(i) and (iv) of this section does not include a person's  
24 ownership of, or rights in, computer software as defined in RCW  
25 82.04.215, including computer software used in providing a digital  
26 automated service; master copies of software; and digital goods and  
27 digital codes residing on servers located in this state.

28 (3)(a) Payroll counting toward the thresholds in subsection  
29 (1)(c)(ii) and (iv) of this section is the total amount paid by the  
30 taxpayer for compensation in this state during the tax year plus  
31 nonemployee compensation paid to representative third parties in this  
32 state. Nonemployee compensation paid to representative third parties  
33 includes the gross amount paid to nonemployees who represent the  
34 taxpayer in interactions with the taxpayer's clients and includes sales  
35 commissions.

36 (b) Compensation is paid in this state if the compensation is  
37 properly reportable to this state for unemployment compensation tax

1 purposes, regardless of whether the compensation was actually reported  
2 to this state.

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

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

11 (4) Receipts counting toward the thresholds in subsection  
12 (1)(c)(iii) and (iv) of this section are those amounts included in the  
13 numerator of the receipts factor under sections 105 and 106 of this  
14 act.

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

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

33 (6) Subsections (1) through (5) of this section only apply with  
34 respect to the taxes imposed under this chapter on apportionable  
35 activities as defined in RCW 82.04.460. For purposes of the taxes  
36 imposed under this chapter on any activity not included in the  
37 definition of apportionable activities in RCW 82.04.460, a person is  
38 deemed to have substantial nexus with this state if the person has a

1 physical presence in this state, which need only be demonstrably more  
2 than a slightest presence. For purposes of this subsection, a person  
3 is physically present in this state if the person has property or  
4 employees in this state. A person is also physically present in this  
5 state if the person, either directly or through an agent or other  
6 representative, engages in activities in this state that are  
7 significantly associated with the person's ability to establish or  
8 maintain a market for its products in this state.

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

11 (1) The apportionable income of a person within the scope of RCW  
12 82.04.460(1) is apportioned to Washington by multiplying its  
13 apportionable income by the receipts factor. Persons who are subject  
14 to tax under more than one of the tax classifications enumerated in RCW  
15 82.04.460(3)(a) (i) through (ix) must calculate a separate receipts  
16 factor for each tax classification that the person is taxable under.

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

20 (3)(a) The numerator of the receipts factor is the total gross  
21 income of the business of the taxpayer attributable to this state  
22 during the tax year from engaging in an apportionable activity. The  
23 denominator of the receipts factor is the total gross income of the  
24 business of the taxpayer from engaging in an apportionable activity  
25 everywhere in the world during the tax year.

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

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

32 (ii) If the customer received the benefit of the service or used  
33 the intangible property in more than one state, gross income of the  
34 business must be attributed to the state in which the benefit of the  
35 service was primarily received or in which the intangible property was  
36 primarily used.

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

7 (iv) If the taxpayer is unable to attribute gross income of the  
8 business under the provisions of (b)(i), (ii), or (iii) of this  
9 subsection (3), gross income of the business must be attributed to the  
10 state to which the billing statements or invoices are sent to the  
11 customer by the taxpayer.

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

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

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

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

36 (c) Gross income of the business from engaging in an apportionable  
37 activity must be excluded from the denominator of the receipts factor  
38 if, in respect to such activity, at least some of the activity is



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

16 (d) This subsection (3) does not apply to financial institutions  
17 with respect to apportionable income taxable under RCW 82.04.290.  
18 Financial institutions must calculate the receipts factor as provided  
19 in section 106 of this act and subsection (4) of this section with  
20 respect to apportionable income taxable under RCW 82.04.290. For  
21 purposes of this subsection, "financial institution" has the same  
22 meaning as in section 106 of this act.

23 (4) A taxpayer may calculate the receipts factor for the current  
24 tax year based on the most recent calendar year for which information  
25 is available for the full calendar year. If a taxpayer does not  
26 calculate the receipts factor for the current tax year based on  
27 previous calendar year information as authorized in this subsection,  
28 the business must use current year information to calculate the  
29 receipts factor for the current tax year. In either case, a taxpayer  
30 must correct the reporting for the current tax year when complete  
31 information is available to calculate the receipts factor for that  
32 year, but not later than October 31st of the following tax year.  
33 Interest will apply to any additional tax due on a corrected tax  
34 return. Interest must be assessed at the rate provided for delinquent  
35 excise taxes under chapter 82.32 RCW, retroactively to the date the  
36 original return was due, and will accrue until the additional taxes are  
37 paid. Penalties as provided in RCW 82.32.090 will apply to any such  
38 additional tax due only if the current tax year reporting is not

1 corrected and the additional tax is not paid by October 31st of the  
2 following tax year. Interest as provided in RCW 82.32.060 will apply  
3 to any tax paid in excess of that properly due on a return as a result  
4 of a taxpayer using previous calendar year data or incomplete current-  
5 year data to calculate the receipts factor.

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

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

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

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

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

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

35 (ii) The denominator of the receipts factor includes gross income  
36 from interest, fees, and penalties on loans secured by real property,

1 personal property, or both real and personal property, wherever the  
2 property is located.

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

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

13 (c) The receipts factor includes gross income from net gains, which  
14 may not be less than zero, on the sale of loans. Net gains on the sale  
15 of loans includes income recorded under the coupon stripping rules of  
16 26 U.S.C. Sec. 1286 of the federal internal revenue code of 1986, as  
17 existing on April 1, 2010.

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

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

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

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

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

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

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

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

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

27 (e)(i) Interest, dividends, net gains (which may not be less than  
28 zero), and other income from investment assets and activities and from  
29 trading assets and activities, as provided in this subsection (2)(e),  
30 are included in the receipts factor. Investment assets and activities  
31 and trading assets and activities include but are not limited to:  
32 Investment securities; trading account assets; federal funds;  
33 securities purchased and sold under agreements to resell or repurchase;  
34 options; futures contracts; forward contracts; notional principal  
35 contracts such as swaps; equities; and foreign currency transactions.

36 (ii) The numerator of the receipts factor includes gross income  
37 from interest, dividends, net gains (which may not be less than zero),  
38 and other receipts from investment assets and activities and from

1 trading assets and activities described in (e)(i) of this subsection  
2 (2) that are attributable to this state. The denominator of the  
3 receipts factor includes all such gross income wherever earned.

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

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

24 (II) The amount used for purposes of making the calculation in  
25 (e)(ii)(B)(I) of this subsection (2) is the amount by which interest  
26 from federal funds sold and securities purchased under resale  
27 agreements exceeds interest expense on federal funds purchased and  
28 securities sold under repurchase agreements.

29 (C)(I) The amount of interest, dividends, gains and other income  
30 from trading assets and activities, including but not limited to assets  
31 and activities in the matched book, in the arbitrage book, and foreign  
32 currency transactions, but excluding amounts described in (e)(ii)(A) or  
33 (B) of this subsection (2), attributable to this state and included in  
34 the numerator of the receipts factor is determined by multiplying the  
35 amount described in (e)(ii)(C)(II) of this subsection (2) by a  
36 fraction. The numerator of the fraction is the average value of such  
37 trading assets that are properly assigned to a regular place of

1 business of the financial institution within this state. The  
2 denominator of the fraction is the average value of all such assets.

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

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

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

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

27 (B) The amount of interest from federal funds sold and purchased  
28 and from securities purchased under resale agreements and securities  
29 sold under repurchase agreements attributable to this state and  
30 included in the numerator of the receipts factor is determined by  
31 multiplying the amount described in (e)(ii)(B)(II) of this subsection  
32 (2) from such funds and such securities by a fraction. The numerator  
33 of the fraction is the gross income from such funds and such securities  
34 that are properly assigned to a regular place of business of the  
35 financial institution within this state. The denominator of the  
36 fraction is the gross income from all such funds and such securities.

37 (C) The amount of interest, dividends, gains and other receipts  
38 from trading assets and activities, including but not limited to assets

1 and activities in the matched book, in the arbitrage book, and foreign  
2 currency transactions, but excluding amounts described in (e)(ii)(A) or  
3 (B) of this subsection (2), attributable to this state and included in  
4 the numerator of the receipts factor is determined by multiplying the  
5 amount described in (e)(ii)(C)(II) of this subsection (2) by a  
6 fraction. The numerator of the fraction is the gross income from such  
7 trading assets and activities that are properly assigned to a regular  
8 place of business of the financial institution within this state. The  
9 denominator of the fraction is the gross income from all such assets  
10 and activities.

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

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

31 (f) The numerator of the receipts factor includes gross income from  
32 interest, fees, and penalties on credit card receivables, and gross  
33 income from fees charged to cardholders, such as annual fees, if the  
34 billing address of the cardholder is in this state. The denominator of  
35 the receipts factor includes gross income from interest, fees, and  
36 penalties on all credit card receivables, and gross income from fees  
37 charged to all cardholders, such as annual fees.

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

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

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

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

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

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

35 (k)(i) The numerator of the receipts factor includes apportionable  
36 income taxable under RCW 82.04.290 and not otherwise included in the  
37 receipts factor under this subsection (2) if the activity producing the  
38 apportionable income is performed in this state. If the activity is



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

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

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

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

19 (a) "Apportionable income" has the same meaning as in RCW  
20 82.04.460.

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

23 (c) "Financial institution" has the same meaning as in WAC 458-20-  
24 14601. However, the department may not make any substantive changes to  
25 the definition of "financial institution" in WAC 458-20-14601 unless  
26 the changes implement a legislative amendment to this definition of  
27 financial institution.

28 (d) "State" means a state of the United States, the District of  
29 Columbia, the Commonwealth of Puerto Rico, any territory or possession  
30 of the United States, or any foreign country or political subdivision  
31 of a foreign country.

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

34 (1) Upon every person engaging within this state in the business of  
35 receiving income from royalties (~~(or charges in the nature of royalties~~  
36 ~~for the granting of intangible rights, such as copyrights, licenses,~~  
37 ~~patents, or franchise fees)), the amount of tax with respect to~~

1 ((such)) the business ((shall be)) is equal to the gross income from  
2 royalties ((or charges in the nature of royalties from the business))  
3 multiplied by the rate of 0.484 percent.

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

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

17 (1) Except as otherwise provided in this section, any person  
18 ((rendering services)) earning apportionable income taxable under ((RCW  
19 82.04.290 or 82.04.2908)) this chapter and ((maintaining places of  
20 business both within and without this state which contribute to the  
21 rendition of such services shall)) also taxable in another state, must,  
22 for the purpose of computing tax liability under ((RCW 82.04.290 or  
23 82.04.2908)) this chapter, apportion to this state, in accordance with  
24 section 105 of this act, that portion of the person's ((gross))  
25 apportionable income ((which is)) derived from ((services rendered))  
26 business activities performed within this state. ((Where such  
27 apportionment cannot be accurately made by separate accounting methods,  
28 the taxpayer shall apportion to this state that proportion of the  
29 taxpayer's total income which the cost of doing business within the  
30 state bears to the total cost of doing business both within and without  
31 the state.))

32 (2) ((Notwithstanding the provision of subsection (1) of this  
33 section, persons doing business both within and without the state who  
34 receive gross income from service charges, as defined in RCW 63.14.010  
35 (relating to amounts charged for granting the right or privilege to  
36 make deferred or installment payments) or who receive gross income from  
37 engaging in business as financial institutions within the scope of

1 ~~chapter 82.14A RCW (relating to city taxes on financial institutions)~~  
2 ~~shall apportion or allocate gross income taxable under RCW 82.04.290 to~~  
3 ~~this state pursuant to rules promulgated by the department consistent~~  
4 ~~with uniform rules for apportionment or allocation developed by the~~  
5 ~~states.~~

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

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

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

- 27 (i) RCW 82.04.255;  
28 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);  
29 (iii) RCW 82.04.280(5);  
30 (iv) RCW 82.04.285;  
31 (v) RCW 82.04.286;  
32 (vi) RCW 82.04.290;  
33 (vii) RCW 82.04.2907;  
34 (viii) RCW 82.04.2908; and  
35 (ix) RCW 82.04.260(14), 82.04.263, and 82.04.280(1), but only to  
36 the extent of any activity that would be taxable under any of the  
37 provisions enumerated under (a)(i) through (viii) of this subsection

1 (3) if the tax classifications in RCW 82.04.260(14), 82.04.263, and  
2 82.04.280(1) did not exist.

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

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

12 (A) "Business activities tax" has the same meaning as in section  
13 105 of this act; and

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

## 15 **PART II**

### 16 **Tax Avoidance Transactions**

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

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

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

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

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

30 (b) For purposes of this subsection, "affiliated" means under  
31 common control. "Control" means the possession, directly or  
32 indirectly, of more than fifty percent of the power to direct or cause  
33 the direction of the management and policies of a person, whether  
34 through the ownership of voting shares, by contract, or otherwise.

35 (2)(a) The department must, as resources allow, adopt rules to  
36 assist in determining when to disregard the form of a transaction or a

1 related series of transactions adopted for the purposes described in  
2 subsection (1)(a)(i) through (iii) of this section. In adopting rules,  
3 the department may consider the following judicial doctrines, except to  
4 the extent such doctrines are inconsistent with express provisions  
5 contained in Washington state statutes:

- 6 (i) The sham transaction doctrine;
- 7 (ii) The economic substance doctrine;
- 8 (iii) The business purpose doctrine;
- 9 (iv) The substance over form doctrine;
- 10 (v) The step transaction doctrine; and
- 11 (vi) The assignment of income doctrine.

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

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

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

22 (1)(a) The department may not use section 201 of this act to  
23 disregard any transaction, plan, or arrangement initiated before April  
24 1, 2010, if, in respect to such transaction, plan, or arrangement, the  
25 taxpayer had reported its tax liability in conformance with either  
26 specific written instructions provided by the department to the  
27 taxpayer, a determination published under the authority of RCW  
28 82.32.410, or other document published by the department.

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

34 (2) For purposes of this section, "specific written instructions"  
35 means tax reporting instructions provided to a taxpayer and which  
36 specifically identifies the taxpayer to whom the instructions apply.

1 Specific written instructions may be provided as part of an audit, tax  
2 assessment, determination, closing agreement, or in response to a  
3 binding ruling request.

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

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

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

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

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

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

34 (6) If the department finds that all or any part of a deficiency  
35 resulted from engaging in a disregarded transaction, as described in  
36 section 201(1)(a) (i), (ii), or (iii) of this act, the department must  
37 assess a penalty of thirty-five percent of the additional tax found to  
38 be due as a result of engaging in a transaction disregarded by the

1 department under section 201(1)(a) (i), (ii), or (iii) of this act.  
2 The penalty provided in this subsection may be assessed together with  
3 any other applicable penalties provided in this section on the same tax  
4 found to be due, except for the evasion penalty provided in subsection  
5 (7) of this section. The department may not assess the penalty under  
6 this subsection if, before the department discovers the taxpayer's use  
7 of a transaction described under section 201(1)(a) (i), (ii), or (iii)  
8 of this act, the taxpayer discloses its participation in the  
9 transaction to the department.

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

14 (~~(7)~~) (8) The penalties imposed under subsections (1) through (4)  
15 of this section can each be imposed on the same tax found to be due.  
16 This subsection does not prohibit or restrict the application of other  
17 penalties authorized by law.

18 (~~(8)~~) (9) The department (~~of revenue~~) may not impose both the  
19 evasion penalty and the penalty for disregarding specific written  
20 instructions or the penalty provided in subsection (6) of this section  
21 on the same tax found to be due.

22 (~~(9)~~) (10) For the purposes of this section, "return" means any  
23 document a person is required by the state of Washington to file to  
24 satisfy or establish a tax or fee obligation that is administered or  
25 collected by the department (~~of revenue~~), and that has a statutorily  
26 defined due date.

27 NEW SECTION. Sec. 204. (1) The legislature finds that this  
28 state's tax policy with respect to the taxation of transactions between  
29 affiliated entities and the income derived from such transactions  
30 (intercompany transactions) has motivated some taxpayers to engage in  
31 transactions designed solely or primarily to minimize the tax effects  
32 of intercompany transactions. The legislature further finds that some  
33 intercompany transactions result from taxpayers that are required to  
34 establish affiliated entities to comply with regulatory mandates and  
35 that transactions between such affiliates effectively increases the tax  
36 burden in this state on the affiliated group of entities.



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

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

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

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

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

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

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

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

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

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

7 (d) Extended warranty; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30       (1) An organization that fails to report a transfer of the  
31 controlling interest in the organization under RCW 43.07.390 to the  
32 secretary of state and is later determined to be subject to real estate  
33 excise taxes due to the transfer, (~~shall be~~) is subject to the  
34 provisions of RCW 82.45.100 as well as the evasion penalty in RCW  
35 82.32.090(~~(+6))~~ (7).

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

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

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

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

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

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

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

23 **PART III**

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

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

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

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

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

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

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

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

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

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

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

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

3 (ii) Gains on the sale of loans.

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

6 **PART IV**

7 **Repealing the Nonresident Sales Tax Exemption**

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

14 **PART V**

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

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

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

29 (3) The legislature finds that most out-of-state businesses selling  
30 consumer products in this state will either be eligible for the  
31 exemption under RCW 82.04.423 or could easily restructure their  
32 business operations to qualify for the exemption. As a result, the  
33 legislature expects that the broadened interpretation of the direct  
34 sellers' exemption will lead to large and devastating revenue losses.

1 This comes at a time when the state's existing budget is facing a two  
2 billion six hundred million dollar shortfall, which could grow, while  
3 at the same time the demand for state and state-funded services is also  
4 growing. Moreover, the legislature further finds that RCW 82.04.423  
5 provides preferential tax treatment for out-of-state businesses over  
6 their in-state competitors and now creates a strong incentive for in-  
7 state businesses to move their operations outside Washington.

8 (4) Therefore, the legislature finds that it is necessary to  
9 reaffirm the legislature's intent in establishing the direct sellers'  
10 exemption and prevent the loss of revenues resulting from the expanded  
11 interpretation of the exemption by amending RCW 82.04.423 retroactively  
12 to conform the exemption to the original intent of the legislature and  
13 by prospectively ending the direct sellers' exemption as of the  
14 effective date of this section. The legislature recognizes that the  
15 department of revenue has asked the Washington supreme court to  
16 reconsider its decision in *Dot Foods*. As a result, if the *Dot Foods*  
17 decision is not final on the effective date of section 502 of this act,  
18 it is the legislature's intent that the amendments in section 502 of  
19 this act be considered clarifying in nature.

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

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

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

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

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

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

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

1 retail of, only consumer products in the home or otherwise than in a  
2 permanent retail establishment; and

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

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

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

17 **PART VI**

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

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

31 (b) The legislature intends to narrow the exemption provided for  
32 slaughtering, breaking, and/or processing perishable meat products  
33 and/or selling such products at wholesale by requiring that the end  
34 product be a perishable meat product; a nonperishable meat product that  
35 is comprised primarily of animal carcass by weight or volume, other  
36 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. 602.** 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. 603.** 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. 604.** 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. 605.** 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. 606.** 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. 607.** 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. 608.** 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 602 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 602 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. 609.** 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. 610.** 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 (11),

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

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

19 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),  
20 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~(+4)~~) (10), or  
21 (11), or (~~(+12)~~) section 602(1) of this act, including those persons  
22 who are also taxable under RCW 82.04.261, with respect to extracting or  
23 manufacturing products in this state (~~(shall be)~~) are allowed a credit  
24 against those taxes for any (i) gross receipts taxes paid to another  
25 state with respect to the sales of the products so extracted or  
26 manufactured in this state, (ii) manufacturing taxes paid with respect  
27 to the manufacturing of products using ingredients so extracted in this  
28 state, or (iii) manufacturing taxes paid with respect to manufacturing  
29 activities completed in another state for products so manufactured in  
30 this state. The amount of the credit (~~(shall)~~) may not exceed the tax  
31 liability arising under this chapter with respect to the extraction or  
32 manufacturing of those products.

33 (5) For the purpose of this section:

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

35 (i) Which is imposed on or measured by the gross volume of  
36 business, in terms of gross receipts or in other terms, and in the  
37 determination of which the deductions allowed would not constitute the  
38 tax an income tax or value added tax; and

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

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

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

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

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

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

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

30 (2) The credit is equal to:

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

35 (B) Leasehold excise taxes paid with respect to buildings  
36 constructed after January 1, 2006, the land upon which the buildings



1 are located, or both, if the buildings are used exclusively in  
2 manufacturing commercial airplanes or components of such airplanes; and  
3 (C) Property taxes or leasehold excise taxes paid on, or with  
4 respect to, buildings constructed after June 30, 2008, the land upon  
5 which the buildings are located, or both, and used exclusively for  
6 aerospace product development or in providing aerospace services, by  
7 persons not within the scope of (a)(i)(A) and (B) of this subsection  
8 (2) and are: (I) Engaged in manufacturing tooling specifically  
9 designed for use in manufacturing commercial airplanes or their  
10 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or  
11 (ii) Property taxes attributable to an increase in assessed value  
12 due to the renovation or expansion, after: (A) December 1, 2003, of a  
13 building used exclusively in manufacturing commercial airplanes or  
14 components of such airplanes; and (B) June 30, 2008, of buildings used  
15 exclusively for aerospace product development or in providing aerospace  
16 services, by persons not within the scope of (a)(ii)(A) of this  
17 subsection (2) and are: (I) Engaged in manufacturing tooling  
18 specifically designed for use in manufacturing commercial airplanes or  
19 their components; or (II) taxable under RCW 82.04.290(3) or  
20 82.04.250(3); and  
21 (b) An amount equal to:  
22 (i)(A) Property taxes paid, by persons taxable under RCW  
23 82.04.260(~~((+11))~~) (10)(a), on machinery and equipment exempt under RCW  
24 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;  
25 (B) Property taxes paid, by persons taxable under RCW  
26 82.04.260(~~((+11))~~) (10)(b), on machinery and equipment exempt under RCW  
27 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or  
28 (C) Property taxes paid, by persons taxable under RCW  
29 (~~((82.04.0250(3))~~~~[82.04.250(3)]~~) 82.04.250(3) or 82.04.290(3), on  
30 computer hardware, computer peripherals, and software exempt under RCW  
31 82.08.975 or 82.12.975 and acquired after June 30, 2008.  
32 (ii) For purposes of determining the amount eligible for credit  
33 under (i)(A) and (B) of this subsection (2)(b), the amount of property  
34 taxes paid is multiplied by a fraction.  
35 (~~((+I))~~) (A) The numerator of the fraction is the total taxable  
36 amount subject to the tax imposed under RCW 82.04.260(~~((+11))~~) (10) (a)  
37 or (b) on the applicable business activities of manufacturing

1 commercial airplanes, components of such airplanes, or tooling  
2 specifically designed for use in the manufacturing of commercial  
3 airplanes or components of such airplanes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 purposes of determining whether the computer equipment is used  
2 primarily for administrative purposes.

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

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

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

34 (b) If a person fails to submit an annual report under (a) of this  
35 subsection by the due date of the report, the department (~~(shall)~~) must  
36 declare the amount of taxes exempted or credited, or reduced in the  
37 case of the preferential business and occupation tax rate, for that

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

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

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

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

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

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

36 ~~(ii) If on December 31, 2007, final assembly of a superefficient~~

1 ~~airplane has not begun in Washington state, the department shall~~  
2 ~~provide notice of such to affected taxpayers, the legislature, and~~  
3 ~~others as deemed appropriate by the department.~~

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

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

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

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

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

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

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

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

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

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

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

6 (i) The number of total employment positions;

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

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

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

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

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

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

36 (e) Persons for whom the actual amount of the tax reduction is less  
37 than ten thousand dollars during the period covered by the survey may

1 request the department to treat the amount of the tax reduction as  
2 confidential under RCW 82.32.330.

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

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

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

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

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

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



1 rate provided in RCW 82.04.260(~~(+14)~~) (13). The department may extend  
2 the due date for timely filing of annual reports under this section as  
3 provided in RCW 82.32.590.

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

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

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

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

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

37 (5) By November 1, 2014, and November 1, 2016, the fiscal  
38 committees of the house of representatives and the senate, in

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

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

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

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

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

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

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

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

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

32 (b) Excise taxes on the sale, purchase, use, or possession of (i)  
33 real property; (ii) tangible personal property; (iii) extended  
34 warranties; (iv) services, including digital automated services as

1 defined in RCW 82.04.192; and (v) digital goods and digital codes as  
2 those terms are defined in RCW 82.04.192; and

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

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

9 **PART VII**

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

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

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

16 (a) Qualifying livestock nutrient management equipment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (5) A person may not claim the exemption under this section April  
31 1, 2010, through June 30, 2015.

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

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

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

37 (a) Qualifying livestock nutrient management equipment;

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

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

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

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

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

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

25 (4) A person may not claim the exemption under this section April  
26 1, 2010, through June 30, 2015.

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

## 28 PART VIII

### 29 **Ending the Preferential Business and Occupation Tax Treatment Received** 30 **by Directors of Corporations**

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

1 with the object of gain, benefit, or advantage to the taxpayer or to  
2 another person or class, directly or indirectly, unless a specific  
3 exemption applies.

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

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

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

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

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

35 (1) This chapter (~~shall~~) does not apply to any person in respect  
36 to his or her employment in the capacity of an employee or servant as  
37 distinguished from that of an independent contractor. For the purposes

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

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

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

14 **PART IX**

15 **Airplane Excise Tax**

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

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

- 20 (1) "Department" means the department of licensing.
- 21 (2) "Aircraft" means any weight-carrying device or structure for  
22 navigation of the air which is designed to be supported by the air;  
23 ~~((2) "Secretary" means the secretary of transportation;))~~
- 24 (3) "Person" includes a firm, partnership, limited liability  
25 company, or corporation(~~(~~
- 26 ~~(4) "Small multi-engine fixed wing" means any piston-driven multi-~~  
27 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~  
28 ~~manufacturer of less than seventy-five hundred pounds; and~~
- 29 ~~(5) "Large multi-engine fixed wing" means any piston-driven multi-~~  
30 ~~engine fixed wing aircraft with a maximum gross weight as listed by the~~  
31 ~~manufacturer of seventy-five hundred pounds or more)).~~

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

- 34 (1) An annual excise tax is hereby imposed for the privilege of



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

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

15 ~~(2))~~ (3) Persons who are required to register aircraft under  
16 chapter 47.68 RCW and who register aircraft in another state or foreign  
17 country and avoid the (Washington) aircraft excise tax imposed under  
18 this section are liable for (such) the unpaid excise tax. A  
19 violation of this subsection is a gross misdemeanor.

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

24 ~~((3))~~ (5) Except as provided under subsection((s (1) and (2)))  
25 (3) of this section, a violation of this chapter is a misdemeanor  
26 punishable as provided in chapter 9A.20 RCW.

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

29 (1) The department of revenue must prepare at least once each year  
30 a depreciation schedule for use in the determination of fair market  
31 value, which is considered the taxable value for the purposes of this  
32 chapter. The schedule must be based upon information available to the  
33 department pertaining to the current fair market value of aircraft.  
34 Except as otherwise provided in this section, the fair market value of  
35 an aircraft for the purposes of this chapter must be based on the most  
36 recent purchase price depreciated according to the year of the most  
37 recent purchase of the aircraft. The most recent purchase price is the

1 consideration, whether money, credit, rights, or other property  
2 expressed in terms of money, paid or given or contracted to be paid or  
3 given by the purchaser to the seller for the aircraft.

4 (2) If the most recent purchase price of the aircraft is not  
5 available or ascertainable, the department of revenue may determine the  
6 fair market value using any information that may be available,  
7 including any guidebook, report, or compendium of recognized standing  
8 in the aviation industry. In the case of aircraft manufactured or  
9 produced by the owner, the value of the aircraft may be determined  
10 according to the value of the ingredients or components used to  
11 manufacture or produce the aircraft.

12 (3) The department of revenue may adopt any rules necessary to  
13 implement this section, including any rules necessary to provide a  
14 reasonable method or methods to determine the fair market value of an  
15 aircraft where the most recent purchase price is not available or  
16 ascertainable.

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

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

21

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

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32 (2)) The amount of tax imposed under ~~((subsection (1) of this~~  
33 ~~section))~~ RCW 82.48.020 for each calendar year ~~((shall))~~ must be  
34 divided into twelve parts corresponding to the months of the calendar  
35 year, and the excise tax upon an aircraft registered for the first time

1 in this state after the last day of any month (~~shall~~) is only (~~be~~)  
2 levied for the remaining months of the calendar year including the  
3 month in which the aircraft is being registered(~~(-PROVIDED, That)~~).  
4 However, the minimum amount payable (~~shall be~~) is three dollars.

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

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

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

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

16 The (~~secretary shall~~) department must regularly pay to the state  
17 treasurer the excise taxes collected under this chapter(~~(, which shall~~  
18 ~~be credited by the state treasurer as follows: Ninety percent to the~~  
19 ~~general fund and ten percent to the aeronautics account in the~~  
20 ~~transportation fund for administrative expenses)~~) for deposit into the  
21 general fund.

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

24 (~~The first tax to be collected under this chapter shall be for the~~  
25 ~~calendar year 1968.)~~) (1) No aircraft with respect to which the excise  
26 tax imposed by this chapter is payable (~~shall~~) may be listed and  
27 assessed for ad valorem taxation so long as this chapter remains in  
28 effect(~~(, and any such assessment heretofore made except under~~  
29 ~~authority of section 13, chapter 49, Laws of 1949 and section~~  
30 ~~82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled:~~  
31 ~~PROVIDED, That)~~).

32 (2) Any aircraft, whether or not subject to the provisions of this  
33 chapter, with respect to which the excise tax imposed by this chapter  
34 will not be paid or has not been paid for any year (~~shall~~) must be  
35 listed and assessed for ad valorem taxation in that year, and the ad

1 valorem tax liability resulting from such listing and assessment  
2 ((shall)) must be collected in the same manner as though this chapter  
3 had not been passed(~~(: PROVIDED FURTHER, That this chapter shall not~~  
4 ~~be construed to affect any ad valorem tax based upon assessed~~  
5 ~~valuations made in 1948 and/or any preceding year for taxes payable in~~  
6 ~~1949 or any preceding year, which ad valorem tax liability tax for any~~  
7 ~~such years shall remain payable and collectible in the same manner as~~  
8 ~~though this chapter had not been passed))).~~

9 **PART X**

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

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

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

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

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

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

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

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

1 determined to be justifiable by the department a second fifteen day  
2 period may be authorized consecutive with the first fifteen day period;  
3 and for the purposes of this exemption the term "nonresident" as used  
4 herein includes a user who has one or more places of business in this  
5 state as well as in one or more other states, but the exemption for  
6 nonresidents applies only to those vehicles which are most frequently  
7 dispatched, garaged, serviced, maintained, and operated from the user's  
8 place of business in another state.

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

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

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

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

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

35 **PART XI**

36 **Foreclosure Exemption**

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

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

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

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

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

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

36           (ii) When persons are not commonly owned or controlled, they must  
37 be treated as acting in concert only when the unity with which the  
38 purchasers have negotiated and will consummate the transfer of

1 ownership interests supports a finding that they are acting as a single  
2 entity. If the acquisitions are completely independent, with each  
3 purchaser buying without regard to the identity of the other  
4 purchasers, then the acquisitions are considered separate acquisitions.

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

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

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

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

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

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

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

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

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

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

1 (j) A conveyance to the federal housing administration or veterans  
2 administration by an authorized mortgagee made pursuant to a contract  
3 of insurance or guaranty with the federal housing administration or  
4 veterans administration.

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

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

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

12 (n) A sale to a regional transit authority or public corporation  
13 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
14 81.112.300.

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



1 due, excise taxes become due and payable on the original transfer as  
2 otherwise provided by law.

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

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

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

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

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

1 (2) For purposes of this section and notwithstanding any other  
2 provisions of law, in a sale involving a judicial or nonjudicial  
3 foreclosure or enforcement of a judgment, the seller is the:

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

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

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

14 **PART XII**

15 **Tax Debts**

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

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

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

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

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

9 (2) Personal liability under this section may be imposed for state  
10 and local sales and use taxes, state business and occupation taxes, and  
11 any other state and local taxes collected by the department in respect  
12 to which the provisions of this chapter apply, regardless of whether  
13 the tax is denominated a tax, fee, charge, or some other term.

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

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

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

35 (b) All other responsible individuals are liable under this section  
36 only for tax liability that became due during the period he or she had  
37 the ((control, supervision,)) responsibility((,)) or duty to ((act for

1 ~~the corporation described in subsection (1) of this section, plus~~  
2 ~~interest and penalties on those taxes.~~

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

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

10 ~~((+4))~~ (6) Any person having been issued a notice of assessment  
11 under this section is entitled to the appeal procedures under RCW  
12 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

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

20 ~~((+7))~~ (8) Collection authority and procedures prescribed in this  
21 chapter apply to collections under this section.

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

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

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

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

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

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

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

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

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

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

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

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

### PART XIII

## Repealing the Business and Occupation Tax Credit for New Employment for International Service Activities



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

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

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

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

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

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

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

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

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

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

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

34 (A) A vitamin;

35 (B) A mineral;

36 (C) An herb or other botanical;

37 (D) An amino acid;

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

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

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

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

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

18 (3) Notwithstanding anything in this section to the contrary, the  
19 exemption of "food and food ingredients" provided in this section shall  
20 apply to food and food ingredients that are furnished, prepared, or  
21 served as meals:

22 (a) Under a state administered nutrition program for the aged as  
23 provided for in the older Americans act (P.L. 95-478 Title III) and RCW  
24 74.38.040(6);

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

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

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



1 (ii) That has been partially funded under ((Title)) 42 U.S.C. Sec.  
2 1485 ((of the federal internal revenue code)); and

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

6 (4)(a) Subsection (1) of this section notwithstanding, the retail  
7 sale of food and food ingredients is subject to sales tax under RCW  
8 82.08.020 if the food and food ingredients are sold through a vending  
9 machine, and in this case the selling price for purposes of RCW  
10 82.08.020 is fifty-seven percent of the gross receipts.

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

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

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

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

22 (2) The exemption of "food and food ingredients" provided for in  
23 subsection (1) of this section ((shall)) does not apply to prepared  
24 food, soft drinks, candy, bottled water, or dietary supplements.  
25 "Prepared food," "soft drinks," ((and)) "dietary supplements," and  
26 "candy" have the same meanings as in RCW 82.08.0293.

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

31 (a) Under a state administered nutrition program for the aged as  
32 provided for in the older Americans act (P.L. 95-478 Title III) and RCW  
33 74.38.040(6);

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

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

9 **PART XV**

10 **Imposing Sales and Use Tax on Cosmetic**  
11 **Surgery, Custom Software, and Janitorial Services**

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

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

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

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

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

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

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

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

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

21 (e) Purchases for the purpose of providing the property to  
22 consumers as part of competitive telephone service, as defined in RCW  
23 82.04.065. The term (~~shall~~) includes every sale of tangible personal  
24 property which is used or consumed or to be used or consumed in the  
25 performance of any activity classified as a "sale at retail" or "retail  
26 sale" even though such property is resold or utilized as provided in  
27 (a), (b), (c), (d), or (e) of this subsection following such use. The  
28 term also means every sale of tangible personal property to persons  
29 engaged in any business which is taxable under RCW 82.04.280 (2) and  
30 (7), 82.04.290, and 82.04.2908; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (c) Credit bureau services;

30 (d) Automobile parking and storage garage services;

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

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

1 (g) The following personal services: Physical fitness services,  
2 tanning salon services, tattoo parlor services, steam bath services,  
3 turkish bath services, escort services, and dating services;

4 (h) Cosmetic medical services; and

5 (i) Janitorial services. The term "janitorial services" means  
6 those cleaning and caretaking services ordinarily performed by  
7 commercial janitor service businesses including, but not limited to,  
8 wall and window washing, floor cleaning and waxing, and the cleaning in  
9 place of rugs, drapes, and upholstery. The term "janitorial services"  
10 does not include painting, papering, repairing, furnace or septic tank  
11 cleaning, snow removal, or sandblasting.

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

13 (i) The renting or leasing of tangible personal property to  
14 consumers; and

15 (ii) Providing tangible personal property along with an operator  
16 for a fixed or indeterminate period of time. A consideration of this  
17 is that the operator is necessary for the tangible personal property to  
18 perform as designed. For the purpose of this subsection (4)(a)(ii), an  
19 operator must do more than maintain, inspect, or set up the tangible  
20 personal property.

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

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

27 (6)(a) The term also includes the sale of prewritten computer  
28 software other than a sale to a person who presents a seller's permit  
29 or uniform exemption certificate in conformity with RCW 82.04.470,  
30 regardless of the method of delivery to the end user. For purposes of  
31 this subsection (6)(a), the sale of prewritten computer software  
32 includes the sale of or charge made for a key or an enabling or  
33 activation code, where the key or code is required to activate  
34 prewritten computer software and put the software into use. There is  
35 no separate sale of the key or code from the prewritten computer  
36 software, regardless of how the sale may be characterized by the vendor  
37 or by the purchaser.

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

3       ~~(i) Custom software; or~~

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

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

10       (7)(a) The term also includes the sale of or charge made for  
11 custom software and the customization of prewritten computer software,  
12 other than a sale to a person who presents a resale certificate under  
13 RCW 82.04.470, regardless of the method of delivery to the consumer.

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

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

32       ~~((+8))~~ (9)(a) The term also includes the following sales to  
33 consumers of digital goods, digital codes, and digital automated  
34 services:

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

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

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

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

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

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

16 (~~((+9+))~~) (10) The term does not include the sale of or charge made  
17 for labor and services rendered in respect to the building, repairing,  
18 or improving of any street, place, road, highway, easement, right-of-  
19 way, mass public transportation terminal or parking facility, bridge,  
20 tunnel, or trestle which is owned by a municipal corporation or  
21 political subdivision of the state or by the United States and which is  
22 used or to be used primarily for foot or vehicular traffic including  
23 mass transportation vehicles of any kind.

24 (~~((+10+))~~) (11) The term also does not include sales of chemical  
25 sprays or washes to persons for the purpose of postharvest treatment of  
26 fruit for the prevention of scald, fungus, mold, or decay, nor does it  
27 include sales of feed, seed, seedlings, fertilizer, agents for enhanced  
28 pollination including insects such as bees, and spray materials to:

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

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



1 produce or improve wildlife habitat on land that the farmer owns or  
2 leases.

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

19 ~~((+12+))~~ (13) The term does not include the sale of or charge made  
20 for labor, services, or tangible personal property pursuant to  
21 agreements providing maintenance services for bus, rail, or rail fixed  
22 guideway equipment when a regional transit authority is the recipient  
23 of the labor, services, or tangible personal property, and a transit  
24 agency, as defined in RCW 81.104.015, performs the labor or services.

25 NEW SECTION. **Sec. 1503.** A new section is added to chapter 82.04  
26 RCW to read as follows:

27 (1) "Cosmetic medical service" means any medical procedure  
28 performed on an individual by a person licensed or regulated in a  
29 health profession as described in RCW 18.120.020, and any services  
30 directly related to the performance of the medical procedure, that is  
31 directed at improving the individual's appearance and that is not  
32 medically necessary to promote the proper function of the body or  
33 prevent or treat physical illness or disease. "Cosmetic medical  
34 service" includes, but is not limited to, cosmetic surgery, hair  
35 transplants, cosmetic injections, cosmetic soft tissue fillers,  
36 dermabrasion and chemical peel, laser hair removal, laser skin  
37 resurfacing, laser treatment of leg veins, sclerotherapy, and cosmetic

1 dentistry. Any medical procedure performed on abnormal structures  
2 caused by or related to congenital defects, developmental  
3 abnormalities, trauma, infection, tumors, or disease, including  
4 procedures to improve function or give a more normal appearance, is  
5 medically necessary. Services covered by the individual's medical or  
6 dental insurance or that are deductible by the individual as medical  
7 expenses for purposes of federal income tax are presumed to be  
8 medically necessary services.

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

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

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

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

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

33 (a) Article of tangible personal property purchased at retail, or  
34 acquired by lease, gift, repossession, or bailment, or extracted or  
35 produced or manufactured by the person so using the same, or otherwise  
36 furnished to a person engaged in any business taxable under RCW  
37 82.04.280 (2) or (7), including tangible personal property acquired at

1 a casual or isolated sale, and including by-products used by the  
2 manufacturer thereof, except as otherwise provided in this chapter,  
3 irrespective of whether the article or similar articles are  
4 manufactured or are available for purchase within this state;

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

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

12 (d) Extended warranty; or

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

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

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

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

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

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

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

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

1 bailor or donor has already been subjected to the tax under chapter  
2 82.08 RCW or this chapter and the tax has been paid by the present user  
3 or by the present user's bailor or donor.

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

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

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

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

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

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

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

37 (b) In the case of a seller required to collect use tax from the

1 purchaser, the tax must be collected in an amount equal to the purchase  
2 price multiplied by the applicable rate in effect for the retail sales  
3 tax under RCW 82.08.020.

4 **Sec. 1505.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to  
5 read as follows:

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

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

8 (a) Tangible personal property;

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

11 (c) Amusement or recreation services as defined in RCW  
12 82.04.050(3)(a);

13 (d) Prewritten computer software;

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

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

16 (g) Competitive telephone service, ancillary services, or  
17 telecommunications service as those terms are defined in RCW 82.04.065;  
18 (~~or~~)

19 (h) Digital goods, digital codes, or digital automated services; or  
20 (i) Cosmetic medical services described in RCW 82.04.050(3)(h); and

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

27 **Sec. 1506.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to  
28 read as follows:

29 "Consumer" means the following:

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

1 as an ingredient or component of real or personal property when  
2 installing, repairing, cleaning, altering, imprinting, improving,  
3 constructing, or decorating such real or personal property of or for  
4 consumers or (c) of consuming such property in producing for sale a new  
5 article of tangible personal property or a new substance, of which such  
6 property becomes an ingredient or component or as a chemical used in  
7 processing, when the primary purpose of such chemical is to create a  
8 chemical reaction directly through contact with an ingredient of a new  
9 article being produced for sale or (d) of consuming the property  
10 purchased in producing ferrosilicon which is subsequently used in  
11 producing magnesium for sale, if the primary purpose of such property  
12 is to create a chemical reaction directly through contact with an  
13 ingredient of ferrosilicon or (e) of satisfying the person's  
14 obligations under an extended warranty as defined in RCW 82.04.050(7),  
15 or (f) any service described in RCW 82.04.050(3)(h), if such tangible  
16 personal property replaces or becomes an ingredient or component of  
17 property covered by the extended warranty without intervening use by  
18 such person;

19 (2)(a) Any person engaged in any business activity taxable under  
20 RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or  
21 uses any competitive telephone service, ancillary services, or  
22 telecommunications service as those terms are defined in RCW 82.04.065,  
23 other than for resale in the regular course of business; (c) any person  
24 who purchases, acquires, or uses any service defined in RCW  
25 82.04.050(2) (a) or (g), other than for resale in the regular course of  
26 business or for the purpose of satisfying the person's obligations  
27 under an extended warranty as defined in RCW 82.04.050(7); (d) any  
28 person who purchases, acquires, or uses any amusement and recreation  
29 service defined in RCW 82.04.050(3)(a), other than for resale in the  
30 regular course of business; (e) any person who purchases or acquires an  
31 extended warranty as defined in RCW 82.04.050(7) other than for resale  
32 in the regular course of business; and (f) any person who is an end  
33 user of software. For purposes of this subsection (2)(f) and RCW  
34 82.04.050(6), a person who purchases or otherwise acquires prewritten  
35 computer software, who provides services described in RCW  
36 82.04.050(6)(b) and who will charge consumers for the right to access  
37 and use the prewritten computer software, is not an end user of the  
38 prewritten computer software;

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

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

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

32 (6) Any person engaged in the business of constructing, repairing,  
33 decorating, or improving new or existing buildings or other structures  
34 under, upon, or above real property of or for the United States, any  
35 instrumentality thereof, or a county or city housing authority created  
36 pursuant to chapter 35.82 RCW, including the installing or attaching of  
37 any article of tangible personal property therein or thereto, whether  
38 or not such personal property becomes a part of the realty by virtue of

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

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

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

25 (9) Any person who is an owner, lessee, or has the right of  
26 possession of tangible personal property that, under the terms of an  
27 extended warranty as defined in RCW 82.04.050(7), has been repaired or  
28 is replacement property, but only with respect to the sale of or charge  
29 made for the repairing of the tangible personal property or the  
30 replacement property;

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

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

35 (b)(i) For purposes of this subsection, "end user" means any  
36 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives  
37 by contract a digital product for further commercial broadcast,  
38 rebroadcast, transmission, retransmission, licensing, relicensing,



1 distribution, redistribution or exhibition of the product, in whole or  
2 in part, to others. A person that purchases digital products or  
3 digital codes for the purpose of giving away such products or codes  
4 will not be considered to have engaged in the distribution or  
5 redistribution of such products or codes and will be treated as an end  
6 user;

7 (ii) If a purchaser of a digital code does not receive the  
8 contractual right to further redistribute, after the digital code is  
9 redeemed, the underlying digital product to which the digital code  
10 relates, then the purchaser of the digital code is an end user. If the  
11 purchaser of the digital code receives the contractual right to further  
12 redistribute, after the digital code is redeemed, the underlying  
13 digital product to which the digital code relates, then the purchaser  
14 of the digital code is not an end user. A purchaser of a digital code  
15 who has the contractual right to further redistribute the digital code  
16 is an end user if that purchaser does not have the right to further  
17 redistribute, after the digital code is redeemed, the underlying  
18 digital product to which the digital code relates.

19 **Sec. 1507.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to  
20 read as follows:

21 For the purposes of this chapter:

22 (1) "Purchase price" means the same as sales price as defined in  
23 RCW 82.08.010;

24 (2)(a) "Value of the article used" (~~((shall be))~~) is the purchase  
25 price for the article of tangible personal property, the use of which  
26 is taxable under this chapter. The term also includes, in addition to  
27 the purchase price, the amount of any tariff or duty paid with respect  
28 to the importation of the article used. In case the article used is  
29 acquired by lease or by gift or is extracted, produced, or manufactured  
30 by the person using the same or is sold under conditions wherein the  
31 purchase price does not represent the true value thereof, the value of  
32 the article used (~~((shall))~~) must be determined as nearly as possible  
33 according to the retail selling price at place of use of similar  
34 products of like quality and character under such rules as the  
35 department may prescribe.

36 (b) In case the articles used are acquired by bailment, the value  
37 of the use of the articles so used (~~((shall))~~) must be in an amount

1 representing a reasonable rental for the use of the articles so bailed,  
2 determined as nearly as possible according to the value of such use at  
3 the places of use of similar products of like quality and character  
4 under such rules as the department of revenue may prescribe. In case  
5 any such articles of tangible personal property are used in respect to  
6 the construction, repairing, decorating, or improving of, and which  
7 become or are to become an ingredient or component of, new or existing  
8 buildings or other structures under, upon, or above real property of or  
9 for the United States, any instrumentality thereof, or a county or city  
10 housing authority created pursuant to chapter 35.82 RCW, including the  
11 installing or attaching of any such articles therein or thereto,  
12 whether or not such personal property becomes a part of the realty by  
13 virtue of installation, then the value of the use of such articles so  
14 used (~~shall~~) must be determined according to the retail selling price  
15 of such articles, or in the absence of such a selling price, as nearly  
16 as possible according to the retail selling price at place of use of  
17 similar products of like quality and character or, in the absence of  
18 either of these selling price measures, such value may be determined  
19 upon a cost basis, in any event under such rules as the department of  
20 revenue may prescribe.

21 (c) In the case of articles owned by a user engaged in business  
22 outside the state which are brought into the state for no more than one  
23 hundred eighty days in any period of three hundred sixty-five  
24 consecutive days and which are temporarily used for business purposes  
25 by the person in this state, the value of the article used (~~shall~~)  
26 must be an amount representing a reasonable rental for the use of the  
27 articles, unless the person has paid tax under this chapter or chapter  
28 82.08 RCW upon the full value of the article used, as defined in (a) of  
29 this subsection.

30 (d) In the case of articles manufactured or produced by the user  
31 and used in the manufacture or production of products sold or to be  
32 sold to the department of defense of the United States, the value of  
33 the articles used (~~shall~~) must be determined according to the value  
34 of the ingredients of such articles.

35 (e) In the case of an article manufactured or produced for purposes  
36 of serving as a prototype for the development of a new or improved  
37 product, the value of the article used (~~shall~~) must be determined by:

38 (i) The retail selling price of such new or improved product when first

1 offered for sale; or (ii) the value of materials incorporated into the  
2 prototype in cases in which the new or improved product is not offered  
3 for sale.

4 (f) In the case of an article purchased with a direct pay permit  
5 under RCW 82.32.087, the value of the article used (~~shall~~) must be  
6 determined by the purchase price of such article if, but for the use of  
7 the direct pay permit, the transaction would have been subject to sales  
8 tax;

9 (3) "Value of the service used" means the purchase price for the  
10 digital automated service or other service, the use of which is taxable  
11 under this chapter. If the service is received by gift or under  
12 conditions wherein the purchase price does not represent the true value  
13 thereof, the value of the service used (~~shall~~) must be determined as  
14 nearly as possible according to the retail selling price at place of  
15 use of similar services of like quality and character under rules the  
16 department may prescribe;

17 (4) "Value of the extended warranty used" means the purchase price  
18 for the extended warranty, the use of which is taxable under this  
19 chapter. If the extended warranty is received by gift or under  
20 conditions wherein the purchase price does not represent the true value  
21 of the extended warranty, the value of the extended warranty used  
22 (~~shall~~) must be determined as nearly as possible according to the  
23 retail selling price at place of use of similar extended warranties of  
24 like quality and character under rules the department may prescribe;

25 (5) "Value of the digital good or digital code used" means the  
26 purchase price for the digital good or digital code, the use of which  
27 is taxable under this chapter. If the digital good or digital code is  
28 acquired other than by purchase, the value of the digital good or  
29 digital code must be determined as nearly as possible according to the  
30 retail selling price at place of use of similar digital goods or  
31 digital codes of like quality and character under rules the department  
32 may prescribe;

33 (6) "Use," "used," "using," or "put to use" have their ordinary  
34 meaning, and mean:

35 (a) With respect to tangible personal property, the first act  
36 within this state by which the taxpayer takes or assumes dominion or  
37 control over the article of tangible personal property (as a consumer),

1 and include installation, storage, withdrawal from storage,  
2 distribution, or any other act preparatory to subsequent actual use or  
3 consumption within this state;

4 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
5 first act within this state after the service has been performed by  
6 which the taxpayer takes or assumes dominion or control over the  
7 article of tangible personal property upon which the service was  
8 performed (as a consumer), and includes installation, storage,  
9 withdrawal from storage, distribution, or any other act preparatory to  
10 subsequent actual use or consumption of the article within this state;

11 (c) With respect to an extended warranty, the first act within this  
12 state after the extended warranty has been acquired by which the  
13 taxpayer takes or assumes dominion or control over the article of  
14 tangible personal property to which the extended warranty applies, and  
15 includes installation, storage, withdrawal from storage, distribution,  
16 or any other act preparatory to subsequent actual use or consumption of  
17 the article within this state;

18 (d) With respect to a digital good or digital code, the first act  
19 within this state by which the taxpayer, as a consumer, views,  
20 accesses, downloads, possesses, stores, opens, manipulates, or  
21 otherwise uses or enjoys the digital good or digital code;

22 (e) With respect to a digital automated service, the first act  
23 within this state by which the taxpayer, as a consumer, uses, enjoys,  
24 or otherwise receives the benefit of the service;

25 (f) With respect to a service defined as a retail sale in RCW  
26 82.04.050(6)(b), the first act within this state by which the taxpayer,  
27 as a consumer, accesses the prewritten computer software; (~~and~~)

28 (g) With respect to a service defined as a retail sale in RCW  
29 82.04.050(2)(g), the first act within this state after the service has  
30 been performed by which the taxpayer, as a consumer, views, accesses,  
31 downloads, possesses, stores, opens, manipulates, or otherwise uses or  
32 enjoys the digital good upon which the service was performed; and

33 (h) With respect to a service described in RCW 82.04.050(3)(h), the  
34 first presence within this state by the taxpayer after the service has  
35 been performed upon that taxpayer;

36 (7) "Taxpayer" and "purchaser" include all persons included within  
37 the meaning of the word "buyer" and the word "consumer" as defined in  
38 chapters 82.04 and 82.08 RCW;

1 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),  
2 "retailer" means every seller as defined in RCW 82.08.010 and every  
3 person engaged in the business of selling tangible personal property at  
4 retail and every person required to collect from purchasers the tax  
5 imposed under this chapter.

6 (ii) "Retailer" does not include a professional employer  
7 organization when a covered employee coemployed with the client under  
8 the terms of a professional employer agreement engages in activities  
9 that constitute a sale of tangible personal property, extended  
10 warranty, digital good, digital code, or a sale of any digital  
11 automated service or service defined as a retail sale in RCW 82.04.050  
12 (2)(a) or (g), (3)(a), or (6)(b) that is subject to the tax imposed by  
13 this chapter. In such cases, the client, and not the professional  
14 employer organization, is deemed to be the retailer and is responsible  
15 for collecting and remitting the tax imposed by this chapter.

16 (b) For the purposes of (a) of this subsection, the terms "client,"  
17 "covered employee," "professional employer agreement," and  
18 "professional employer organization" have the same meanings as in RCW  
19 82.04.540;

20 (9) "Extended warranty" has the same meaning as in RCW  
21 82.04.050(7);

22 (10) The meaning ascribed to words and phrases in chapters 82.04  
23 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and  
24 effect with respect to taxes imposed under the provisions of this  
25 chapter. "Consumer," in addition to the meaning ascribed to it in  
26 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also  
27 means any person who distributes or displays, or causes to be  
28 distributed or displayed, any article of tangible personal property,  
29 except newspapers, the primary purpose of which is to promote the sale  
30 of products or services. With respect to property distributed to  
31 persons within this state by a consumer as defined in this subsection  
32 (10), the use of the property (~~shall be~~) is deemed to be by such  
33 consumer.

34 **Sec. 1508.** RCW 82.12.035 and 2009 c 535 s 1107 are each amended to  
35 read as follows:

36 A credit is allowed against the taxes imposed by this chapter upon  
37 the use in this state of tangible personal property, extended warranty,

1 digital good, digital code, digital automated service, or services  
2 defined as a retail sale in RCW 82.04.050 (2)(a) or (g), (3)(a) or (h),  
3 or (6)(b), in the amount that the present user thereof or his or her  
4 bailor or donor has paid a legally imposed retail sales or use tax with  
5 respect to such property, extended warranty, digital good, digital  
6 code, digital automated service, or service defined as a retail sale in  
7 RCW 82.04.050 (2)(a) or (g), (3)(a), or (6)(b) to any other state,  
8 possession, territory, or commonwealth of the United States, any  
9 political subdivision thereof, the District of Columbia, and any  
10 foreign country or political subdivision thereof.

11 **Sec. 1509.** RCW 82.04.060 and 2009 c 535 s 403 are each amended to  
12 read as follows:

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

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

15 (a) Tangible personal property;

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

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

20 (d) Prewritten computer software;

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

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

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

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

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

34 **Sec. 1510.** RCW 82.04.190 and 2009 c 535 s 302 are each amended to  
35 read as follows:

36 "Consumer" means the following:

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

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

1 user of software. For purposes of this subsection (2)(f) and RCW  
2 82.04.050(6), a person who purchases or otherwise acquires prewritten  
3 computer software, who provides services described in RCW  
4 82.04.050(6)(b) and who will charge consumers for the right to access  
5 and use the prewritten computer software, is not an end user of the  
6 prewritten computer software;

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

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

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

37 (6) Any person engaged in the business of constructing, repairing,  
38 decorating, or improving new or existing buildings or other structures



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

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

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

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

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

1 (11)(a) Any end user of a digital product or digital code.  
2 (b)(i) For purposes of this subsection, "end user" means any  
3 taxpayer as defined in RCW 82.12.010 other than a taxpayer who receives  
4 by contract a digital product for further commercial broadcast,  
5 rebroadcast, transmission, retransmission, licensing, relicensing,  
6 distribution, redistribution or exhibition of the product, in whole or  
7 in part, to others. A person that purchases digital products or  
8 digital codes for the purpose of giving away such products or codes  
9 will not be considered to have engaged in the distribution or  
10 redistribution of such products or codes and will be treated as an end  
11 user;  
12 (ii) If a purchaser of a digital code does not receive the  
13 contractual right to further redistribute, after the digital code is  
14 redeemed, the underlying digital product to which the digital code  
15 relates, then the purchaser of the digital code is an end user. If the  
16 purchaser of the digital code receives the contractual right to further  
17 redistribute, after the digital code is redeemed, the underlying  
18 digital product to which the digital code relates, then the purchaser  
19 of the digital code is not an end user. A purchaser of a digital code  
20 who has the contractual right to further redistribute the digital code  
21 is an end user if that purchaser does not have the right to further  
22 redistribute, after the digital code is redeemed, the underlying  
23 digital product to which the digital code relates.

24 **Sec. 1511.** RCW 82.04.215 and 2003 c 168 s 601 are each amended to  
25 read as follows:

26 (1) "Computer" means an electronic device that accepts information  
27 in digital or similar form and manipulates it for a result based on a  
28 sequence of instructions.

29 (2) "Computer software" means a set of coded instructions designed  
30 to cause a computer or automatic data processing equipment to perform  
31 a task. All software is classified as either prewritten or custom.  
32 Consistent with this definition "computer software" includes only those  
33 sets of coded instructions intended for use by an end user and  
34 specifically excludes retained rights in software and master copies of  
35 software.

36 (3) "Custom software" means computer software created for a single  
37 person.

1 (4) "Customization of prewritten computer software" means any  
2 alteration, modification, or development of applications using or  
3 incorporating prewritten computer software for a specific person.  
4 "Customization of prewritten computer software" includes individualized  
5 configuration of software to work with other software and computer  
6 hardware but does not include routine installation. Customization of  
7 prewritten computer software does not change the underlying character  
8 or taxability of the original prewritten computer software.

9 (5) "Master copies" of software means copies of software from which  
10 a software developer, author, inventor, publisher, licensor,  
11 sublicensor, or distributor makes copies for sale or license.

12 (6) "Prewritten computer software" means computer software,  
13 including prewritten upgrades, that is not designed and developed by  
14 the author or other creator to the specifications of a specific  
15 purchaser. The combining of two or more prewritten computer software  
16 programs or prewritten portions thereof does not cause the combination  
17 to be other than prewritten computer software. Prewritten computer  
18 software includes software designed and developed by the author or  
19 other creator to the specifications of a specific purchaser when it is  
20 sold to a person other than such purchaser. Where a person modifies or  
21 enhances computer software of which such person is not the author or  
22 creator, the person (~~shall be~~) is deemed to be the author or creator  
23 only of the person's modifications or enhancements. Prewritten  
24 computer software or a prewritten portion thereof that is modified or  
25 enhanced to any degree, where such modification or enhancement is  
26 designed and developed to the specifications of a specific purchaser,  
27 remains prewritten computer software; however where there is a  
28 reasonable, separately stated charge or an invoice or other statement  
29 of the price given to the purchaser for the modification or  
30 enhancement, the modification or enhancement (~~shall~~) does not  
31 constitute prewritten computer software.

32 (7) "Retained rights" means any and all rights, including  
33 intellectual property rights such as those rights arising from  
34 copyrights, patents, and trade secret laws, that are owned or are held  
35 under contract or license by a software developer, author, inventor,  
36 publisher, licensor, sublicensor, or distributor.

1        NEW SECTION.        **Sec. 1512.**        RCW 82.04.29001 (Creation and  
2 distribution of custom software--Customization of prewritten computer  
3 software--Taxable services) and 2003 c 168 s 602 & 1998 c 332 s 4 are  
4 each repealed.

5        **Sec. 1513.**        RCW 82.08.02088 and 2009 c 535 s 701 are each amended  
6 to read as follows:

7        (1) The tax imposed by RCW 82.08.020 does not apply to the sale of  
8 digital goods, digital codes, digital automated services, prewritten  
9 computer software, or services defined as a retail sale in RCW  
10 82.04.050 (6)(b) or (7) to a buyer that provides the seller with an  
11 exemption certificate claiming multiple points of use. An exemption  
12 certificate claiming multiple points of use must be in a form and  
13 contain such information as required by the department.

14        (2) A buyer is entitled to use an exemption certificate claiming  
15 multiple points of use only if the buyer is a business or other  
16 organization and the digital goods or digital automated services  
17 purchased, or the digital goods or digital automated services to be  
18 obtained by the digital code purchased, or the prewritten computer  
19 software or services defined as a retail sale in RCW 82.04.050 (6)(b)  
20 or (7) purchased will be concurrently available for use within and  
21 outside this state. A buyer is not entitled to use an exemption  
22 certificate claiming multiple points of use for digital goods, digital  
23 codes, digital automated services, prewritten computer software, or  
24 services defined as a retail sale in RCW 82.04.050(6)(b) purchased for  
25 personal use.

26        (3) A buyer claiming an exemption under this section must report  
27 and pay the tax imposed in RCW 82.12.020 and any local use taxes  
28 imposed under the authority of chapter 82.14 RCW and RCW 81.104.170  
29 directly to the department in accordance with RCW 82.12.02088 and  
30 82.14.457.

31        (4) For purposes of this section, "concurrently available for use  
32 within and outside this state" means that employees or other agents of  
33 the buyer may use the digital goods, digital automated services,  
34 prewritten computer software, or services defined as a retail sale in  
35 RCW 82.04.050 (6)(b) or (7) simultaneously from one or more locations  
36 within this state and one or more locations outside this state. A  
37 digital code is concurrently available for use within and outside this

1 state if employees or other agents of the buyer may use the digital  
2 goods or digital automated services to be obtained by the code  
3 simultaneously at one or more locations within this state and one or  
4 more locations outside this state.

5 **Sec. 1514.** RCW 82.12.010 and 2009 c 535 s 304 are each amended to  
6 read as follows:

7 For the purposes of this chapter:

8 (1) "Purchase price" means the same as sales price as defined in  
9 RCW 82.08.010;

10 (2)(a) "Value of the article used" (~~shall be~~) is the purchase  
11 price for the article of tangible personal property, the use of which  
12 is taxable under this chapter. The term also includes, in addition to  
13 the purchase price, the amount of any tariff or duty paid with respect  
14 to the importation of the article used. In case the article used is  
15 acquired by lease or by gift or is extracted, produced, or manufactured  
16 by the person using the same or is sold under conditions wherein the  
17 purchase price does not represent the true value thereof, the value of  
18 the article used (~~shall~~) must be determined as nearly as possible  
19 according to the retail selling price at place of use of similar  
20 products of like quality and character under such rules as the  
21 department may prescribe.

22 (b) In case the articles used are acquired by bailment, the value  
23 of the use of the articles so used (~~shall~~) must be in an amount  
24 representing a reasonable rental for the use of the articles so bailed,  
25 determined as nearly as possible according to the value of such use at  
26 the places of use of similar products of like quality and character  
27 under such rules as the department of revenue may prescribe. In case  
28 any such articles of tangible personal property are used in respect to  
29 the construction, repairing, decorating, or improving of, and which  
30 become or are to become an ingredient or component of, new or existing  
31 buildings or other structures under, upon, or above real property of or  
32 for the United States, any instrumentality thereof, or a county or city  
33 housing authority created pursuant to chapter 35.82 RCW, including the  
34 installing or attaching of any such articles therein or thereto,  
35 whether or not such personal property becomes a part of the realty by  
36 virtue of installation, then the value of the use of such articles so  
37 used (~~shall~~) must be determined according to the retail selling price

1 of such articles, or in the absence of such a selling price, as nearly  
2 as possible according to the retail selling price at place of use of  
3 similar products of like quality and character or, in the absence of  
4 either of these selling price measures, such value may be determined  
5 upon a cost basis, in any event under such rules as the department of  
6 revenue may prescribe.

7 (c) In the case of articles owned by a user engaged in business  
8 outside the state which are brought into the state for no more than one  
9 hundred eighty days in any period of three hundred sixty-five  
10 consecutive days and which are temporarily used for business purposes  
11 by the person in this state, the value of the article used (~~shall~~)  
12 must be an amount representing a reasonable rental for the use of the  
13 articles, unless the person has paid tax under this chapter or chapter  
14 82.08 RCW upon the full value of the article used, as defined in (a) of  
15 this subsection.

16 (d) In the case of articles manufactured or produced by the user  
17 and used in the manufacture or production of products sold or to be  
18 sold to the department of defense of the United States, the value of  
19 the articles used (~~shall~~) must be determined according to the value  
20 of the ingredients of such articles.

21 (e) In the case of an article manufactured or produced for purposes  
22 of serving as a prototype for the development of a new or improved  
23 product, the value of the article used (~~shall~~) must be determined by:  
24 (i) The retail selling price of such new or improved product when first  
25 offered for sale; or (ii) the value of materials incorporated into the  
26 prototype in cases in which the new or improved product is not offered  
27 for sale.

28 (f) In the case of an article purchased with a direct pay permit  
29 under RCW 82.32.087, the value of the article used (~~shall be~~) is  
30 determined by the purchase price of such article if, but for the use of  
31 the direct pay permit, the transaction would have been subject to sales  
32 tax;

33 (3) "Value of the service used" means the purchase price for the  
34 digital automated service or other service, the use of which is taxable  
35 under this chapter. If the service is received by gift or under  
36 conditions wherein the purchase price does not represent the true value  
37 thereof, the value of the service used (~~shall~~) must be determined as

1 nearly as possible according to the retail selling price at place of  
2 use of similar services of like quality and character under rules the  
3 department may prescribe;

4 (4) "Value of the extended warranty used" means the purchase price  
5 for the extended warranty, the use of which is taxable under this  
6 chapter. If the extended warranty is received by gift or under  
7 conditions wherein the purchase price does not represent the true value  
8 of the extended warranty, the value of the extended warranty used  
9 (~~shall~~) must be determined as nearly as possible according to the  
10 retail selling price at place of use of similar extended warranties of  
11 like quality and character under rules the department may prescribe;

12 (5) "Value of the digital good or digital code used" means the  
13 purchase price for the digital good or digital code, the use of which  
14 is taxable under this chapter. If the digital good or digital code is  
15 acquired other than by purchase, the value of the digital good or  
16 digital code must be determined as nearly as possible according to the  
17 retail selling price at place of use of similar digital goods or  
18 digital codes of like quality and character under rules the department  
19 may prescribe;

20 (6) "Use," "used," "using," or "put to use" have their ordinary  
21 meaning, and mean:

22 (a) With respect to tangible personal property, the first act  
23 within this state by which the taxpayer takes or assumes dominion or  
24 control over the article of tangible personal property (as a consumer),  
25 and include installation, storage, withdrawal from storage,  
26 distribution, or any other act preparatory to subsequent actual use or  
27 consumption within this state;

28 (b) With respect to a service defined in RCW 82.04.050(2)(a), the  
29 first act within this state after the service has been performed by  
30 which the taxpayer takes or assumes dominion or control over the  
31 article of tangible personal property upon which the service was  
32 performed (as a consumer), and includes installation, storage,  
33 withdrawal from storage, distribution, or any other act preparatory to  
34 subsequent actual use or consumption of the article within this state;

35 (c) With respect to an extended warranty, the first act within this  
36 state after the extended warranty has been acquired by which the  
37 taxpayer takes or assumes dominion or control over the article of  
38 tangible personal property to which the extended warranty applies, and

1 includes installation, storage, withdrawal from storage, distribution,  
2 or any other act preparatory to subsequent actual use or consumption of  
3 the article within this state;

4 (d) With respect to a digital good or digital code, the first act  
5 within this state by which the taxpayer, as a consumer, views,  
6 accesses, downloads, possesses, stores, opens, manipulates, or  
7 otherwise uses or enjoys the digital good or digital code;

8 (e) With respect to a digital automated service, the first act  
9 within this state by which the taxpayer, as a consumer, uses, enjoys,  
10 or otherwise receives the benefit of the service;

11 (f) With respect to a service defined as a retail sale in RCW  
12 82.04.050 (6)(b) or (7), the first act within this state by which the  
13 taxpayer, as a consumer, accesses the (~~prewritten~~) computer software;  
14 and

15 (g) With respect to a service defined as a retail sale in RCW  
16 82.04.050(2)(g), the first act within this state after the service has  
17 been performed by which the taxpayer, as a consumer, views, accesses,  
18 downloads, possesses, stores, opens, manipulates, or otherwise uses or  
19 enjoys the digital good upon which the service was performed;

20 (7) "Taxpayer" and "purchaser" include all persons included within  
21 the meaning of the word "buyer" and the word "consumer" as defined in  
22 chapters 82.04 and 82.08 RCW;

23 (8)(a)(i) Except as provided in (a)(ii) of this subsection (8),  
24 "retailer" means every seller as defined in RCW 82.08.010 and every  
25 person engaged in the business of selling tangible personal property at  
26 retail and every person required to collect from purchasers the tax  
27 imposed under this chapter.

28 (ii) "Retailer" does not include a professional employer  
29 organization when a covered employee coemployed with the client under  
30 the terms of a professional employer agreement engages in activities  
31 that constitute a sale of tangible personal property, extended  
32 warranty, digital good, digital code, or a sale of any digital  
33 automated service or service defined as a retail sale in RCW 82.04.050  
34 (2)(a) or (g), (3)(a), (~~or~~) (6)(b), or (7) that is subject to the tax  
35 imposed by this chapter. In such cases, the client, and not the  
36 professional employer organization, is deemed to be the retailer and is  
37 responsible for collecting and remitting the tax imposed by this  
38 chapter.



1 (b) For the purposes of (a) of this subsection, the terms "client,"  
2 "covered employee," "professional employer agreement," and  
3 "professional employer organization" have the same meanings as in RCW  
4 82.04.540;

5 (9) "Extended warranty" has the same meaning as in RCW  
6 82.04.050(7);

7 (10) The meaning ascribed to words and phrases in chapters 82.04  
8 and 82.08 RCW, insofar as applicable, (~~shall have~~) has full force and  
9 effect with respect to taxes imposed under the provisions of this  
10 chapter. "Consumer," in addition to the meaning ascribed to it in  
11 chapters 82.04 and 82.08 RCW insofar as applicable, (~~shall~~) also  
12 means any person who distributes or displays, or causes to be  
13 distributed or displayed, any article of tangible personal property,  
14 except newspapers, the primary purpose of which is to promote the sale  
15 of products or services. With respect to property distributed to  
16 persons within this state by a consumer as defined in this subsection  
17 (10), the use of the property (~~shall be~~) is deemed to be by such  
18 consumer.

19 **Sec. 1515.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to  
20 read as follows:

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

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

33 (b) Prewritten computer software, regardless of the method of  
34 delivery, but excluding prewritten computer software that is either  
35 provided free of charge or is provided for temporary use in viewing  
36 information, or both;

1 (c) Services defined as a retail sale in RCW 82.04.050 (2)(a) or  
2 (g), (3)(a), (~~(6)~~) (6)(b), or (7), excluding services defined as a  
3 retail sale in RCW 82.04.050(6)(b) that are provided free of charge;

4 (d) Extended warranty; or

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

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

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

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

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

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

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

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

33 (3)(a) Except as provided in this section, payment of the tax  
34 imposed by this chapter or chapter 82.08 RCW by one purchaser or user  
35 of tangible personal property, extended warranty, digital good, digital  
36 code, digital automated service, or other service does not have the  
37 effect of exempting any other purchaser or user of the same property,

1 extended warranty, digital good, digital code, digital automated  
2 service, or other service from the taxes imposed by such chapters.

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

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

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

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

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

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

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

33 **PART XVI**

34 **Increasing Tobacco Taxes**

35 NEW SECTION. **Sec. 1601.** It is the intent of the legislature to

1 use revenue raised from taxes levied on the sales of cigarettes and  
2 other tobacco products to fund basic health care services.

3 **Sec. 1602.** RCW 82.24.020 and 2009 c 479 s 66 are each amended to  
4 read as follows:

5 (1) There is levied and ~~((there shall be))~~ collected as provided in  
6 this chapter, a tax upon the sale, use, consumption, handling,  
7 possession, or distribution of all cigarettes, in an amount equal to  
8 ~~((one and fifteen one hundredths))~~ 12.125 cents per cigarette.

9 ~~((An additional tax is imposed upon the sale, use, consumption,  
10 handling, possession, or distribution of all cigarettes, in an amount  
11 equal to five hundred twenty five one thousandths of a cent per  
12 cigarette. All revenues collected during any month from this  
13 additional tax shall be deposited in the state general fund by the  
14 twenty fifth day of the following month.~~

15 ~~((3) An additional tax is imposed upon the sale, use, consumption,  
16 handling, possession, or distribution of all cigarettes, in an amount  
17 equal to two and five one hundredths cents per cigarette. All revenues  
18 collected during any month from this additional tax shall be deposited  
19 in the state general fund by the twenty fifth day of the following  
20 month.~~

21 ~~((4))~~ Wholesalers subject to the payment of this tax may, if they  
22 wish, absorb five one-hundredths cents per cigarette of the tax and not  
23 pass it on to purchasers without being in violation of this section or  
24 any other act relating to the sale or taxation of cigarettes.

25 ~~((+5))~~ (3) For purposes of this chapter, "possession" ~~((shall))~~  
26 means both (a) physical possession by the purchaser and, (b) when  
27 cigarettes are being transported to or held for the purchaser or his or  
28 her designee by a person other than the purchaser, constructive  
29 possession by the purchaser or his or her designee, which constructive  
30 possession ~~((shall be))~~ is deemed to occur at the location of the  
31 cigarettes being so transported or held.

32 ~~((+6))~~ (4) In accordance with federal law and rules prescribed by  
33 the department, an enrolled member of a federally recognized Indian  
34 tribe may purchase cigarettes from an Indian tribal organization under  
35 the jurisdiction of the member's tribe for the member's own use exempt  
36 from the applicable taxes imposed by this chapter. Except as provided  
37 in subsection ~~((+7))~~ (5) of this section, any person, who purchases

1 cigarettes from an Indian tribal organization and who is not an  
2 enrolled member of the federally recognized Indian tribe within whose  
3 jurisdiction the sale takes place, is not exempt from the applicable  
4 taxes imposed by this chapter.

5 ~~((+7))~~ (5) If the state enters into a cigarette tax contract or  
6 agreement with a federally recognized Indian tribe under chapter 43.06  
7 RCW, the terms of the contract or agreement ~~((shall))~~ take precedence  
8 over any conflicting provisions of this chapter while the contract or  
9 agreement is in effect.

10 **Sec. 1603.** RCW 82.24.026 and 2009 c 479 s 67 are each amended to  
11 read as follows:

12 (1) In addition to the tax imposed upon the sale, use, consumption,  
13 handling, possession, or distribution of cigarettes set forth in RCW  
14 82.24.020, there is imposed a tax in an amount equal to three cents per  
15 cigarette.

16 (2) The revenue collected under this section ~~((shall))~~ must be  
17 deposited as follows:

18 (a) ~~((28.5))~~ 14 percent ~~((shall))~~ must be deposited into the  
19 general fund.

20 (b) The remainder ~~((shall))~~ must be deposited into the education  
21 legacy trust account.

22 **Sec. 1604.** RCW 82.26.010 and 2005 c 180 s 2 are each amended to  
23 read as follows:

24 The definitions in this section apply throughout this chapter  
25 unless the context clearly requires otherwise.

26 (1) "Tobacco products" means cigars, cheroots, stogies, periques,  
27 granulated, plug cut, crimp cut, ready rubbed, and other smoking  
28 tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-  
29 cut and other chewing tobaccos, shorts, refuse scraps, clippings,  
30 cuttings and sweepings of tobacco, and other kinds and forms of  
31 tobacco, prepared in such manner as to be suitable for chewing or  
32 smoking in a pipe or otherwise, or both for chewing and smoking, and  
33 any other product, regardless of form, that contains tobacco and is  
34 intended for human consumption or placement in the oral or nasal cavity  
35 or absorption into the human body by any other means, but ~~((shall))~~  
36 does not include cigarettes as defined in RCW 82.24.010.

1 (2) "Manufacturer" means a person who manufactures and sells  
2 tobacco products.

3 (3) "Distributor" means (a) any person engaged in the business of  
4 selling tobacco products in this state who brings, or causes to be  
5 brought, into this state from without the state any tobacco products  
6 for sale, (b) any person who makes, manufactures, fabricates, or stores  
7 tobacco products in this state for sale in this state, (c) any person  
8 engaged in the business of selling tobacco products without this state  
9 who ships or transports tobacco products to retailers in this state, to  
10 be sold by those retailers, (d) any person engaged in the business of  
11 selling tobacco products in this state who handles for sale any tobacco  
12 products that are within this state but upon which tax has not been  
13 imposed.

14 (4) "Retailer" means any person engaged in the business of selling  
15 tobacco products to ultimate consumers.

16 (5)(a) "Sale" means any transfer, exchange, or barter, in any  
17 manner or by any means whatsoever, for a consideration, and includes  
18 and means all sales made by any person.

19 (b) The term "sale" includes a gift by a person engaged in the  
20 business of selling tobacco products, for advertising, promoting, or as  
21 a means of evading the provisions of this chapter.

22 (6) "Business" means any trade, occupation, activity, or enterprise  
23 engaged in for the purpose of selling or distributing tobacco products  
24 in this state.

25 (7) "Place of business" means any place where tobacco products are  
26 sold or where tobacco products are manufactured, stored, or kept for  
27 the purpose of sale, including any vessel, vehicle, airplane, train, or  
28 vending machine.

29 (8) "Retail outlet" means each place of business from which tobacco  
30 products are sold to consumers.

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

32 (10) "Person" means any individual, receiver, administrator,  
33 executor, assignee, trustee in bankruptcy, trust, estate, firm,  
34 copartnership, joint venture, club, company, joint stock company,  
35 business trust, municipal corporation, the state and its departments  
36 and institutions, political subdivision of the state of Washington,  
37 corporation, limited liability company, association, society, any group  
38 of individuals acting as a unit, whether mutual, cooperative,

1 fraternal, nonprofit, or otherwise. The term excludes any person  
2 immune from state taxation, including the United States or its  
3 instrumentalities, and federally recognized Indian tribes and enrolled  
4 tribal members, conducting business within Indian country.

5 (11) "Indian country" means the same as defined in chapter 82.24  
6 RCW.

7 (12) "Actual price" means the total amount of consideration for  
8 which tobacco products are sold, valued in money, whether received in  
9 money or otherwise, including any charges by the seller necessary to  
10 complete the sale such as charges for delivery, freight,  
11 transportation, or handling.

12 (13) "Affiliated" means related in any way by virtue of any form or  
13 amount of common ownership, control, operation, or management.

14 (14) "Board" means the liquor control board.

15 (15) "Cigar" means a roll for smoking that is of any size or shape  
16 and that is made wholly or in part of tobacco, irrespective of whether  
17 the tobacco is pure or flavored, adulterated or mixed with any other  
18 ingredient, if the roll has a wrapper made wholly or in greater part of  
19 tobacco. "Cigar" does not include a cigarette.

20 (16) "Cigarette" has the same meaning as in RCW 82.24.010.

21 (17) "Manufacturer's representative" means a person hired by a  
22 manufacturer to sell or distribute the manufacturer's tobacco products,  
23 and includes employees and independent contractors.

24 (18)(a) "Taxable sales price" means:

25 (i) In the case of a taxpayer that is not affiliated with the  
26 manufacturer, distributor, or other person from whom the taxpayer  
27 purchased tobacco products, the actual price for which the taxpayer  
28 purchased the tobacco products;

29 (ii) In the case of a taxpayer that purchases tobacco products from  
30 an affiliated manufacturer, affiliated distributor, or other affiliated  
31 person, and that sells those tobacco products to unaffiliated  
32 distributors, unaffiliated retailers, or ultimate consumers, the actual  
33 price for which that taxpayer sells those tobacco products to  
34 unaffiliated distributors, unaffiliated retailers, or ultimate  
35 consumers;

36 (iii) In the case of a taxpayer that sells tobacco products only to  
37 affiliated distributors or affiliated retailers, the price, determined  
38 as nearly as possible according to the actual price, that other

1 distributors sell similar tobacco products of like quality and  
2 character to unaffiliated distributors, unaffiliated retailers, or  
3 ultimate consumers;

4 (iv) In the case of a taxpayer that is a manufacturer selling  
5 tobacco products directly to ultimate consumers, the actual price for  
6 which the taxpayer sells those tobacco products to ultimate consumers;

7 (v) In the case of a taxpayer that has acquired tobacco products  
8 under a sale as defined in subsection (5)(b) of this section, the  
9 price, determined as nearly as possible according to the actual price,  
10 that the taxpayer or other distributors sell the same tobacco products  
11 or similar tobacco products of like quality and character to  
12 unaffiliated distributors, unaffiliated retailers, or ultimate  
13 consumers; or

14 (vi) In any case where (a)(i) through (v) of this subsection do not  
15 apply, the price, determined as nearly as possible according to the  
16 actual price, that the taxpayer or other distributors sell the same  
17 tobacco products or similar tobacco products of like quality and  
18 character to unaffiliated distributors, unaffiliated retailers, or  
19 ultimate consumers.

20 (b) For purposes of (a)(i) and (ii) of this subsection only,  
21 "person" includes both persons as defined in subsection (10) of this  
22 section and any person immune from state taxation, including the United  
23 States or its instrumentalities, and federally recognized Indian tribes  
24 and enrolled tribal members, conducting business within Indian country.

25 (c) The department may adopt rules regarding the determination of  
26 taxable sales price under this subsection.

27 (19) "Taxpayer" means a person liable for the tax imposed by this  
28 chapter.

29 (20) "Unaffiliated distributor" means a distributor that is not  
30 affiliated with the manufacturer, distributor, or other person from  
31 whom the distributor has purchased tobacco products.

32 (21) "Unaffiliated retailer" means a retailer that is not  
33 affiliated with the manufacturer, distributor, or other person from  
34 whom the retailer has purchased tobacco products.

35 (22) "Moist snuff" means tobacco that is finely cut, ground, or  
36 powdered; is not for smoking; and is intended to be placed in the oral,  
37 but not the nasal, cavity.

38 (23) "Little cigar" means a cigar that has an integrated filter.



1       **Sec. 1605.** RCW 82.26.020 and 2009 c 479 s 70 are each amended to  
2 read as follows:

3       (1) There is levied and (~~there shall be~~) collected a tax upon the  
4 sale, handling, or distribution of all tobacco products in this state  
5 at the following rate:

6       (a) (~~Seventy-five~~) For cigars except little cigars, ninety-five  
7 percent of the taxable sales price of cigars, not to exceed (~~fifty~~)  
8 sixty-five cents per cigar; (~~or~~)

9       (b) (~~Seventy-five~~) For all tobacco products except those covered  
10 under separate provisions of this subsection, ninety-five percent of  
11 the taxable sales price (~~of all tobacco products that are not~~  
12 cigars));

13       (c) For moist snuff, as established in this subsection (1)(c) and  
14 computed on the net weight listed by the manufacturer:

15       (i) On each single unit consumer-sized can or package whose net  
16 weight is one and two-tenths ounces or less, a rate per single unit  
17 that is equal to the greater of 3.025 dollars or the cigarette tax  
18 under chapter 82.24 RCW multiplied by twenty; or

19       (ii) On each single unit consumer-sized can or package whose net  
20 weight is more than one and two-tenths ounces, a proportionate tax at  
21 the rate established in (c)(i) of this subsection (1) on each ounce or  
22 fractional part of an ounce; and

23       (d) For little cigars, an amount per cigar equal to the cigarette  
24 tax under chapter 82.24 RCW.

25       (2) Taxes under this section (~~shall~~) must be imposed at the time  
26 the distributor (a) brings, or causes to be brought, into this state  
27 from without the state tobacco products for sale, (b) makes,  
28 manufactures, fabricates, or stores tobacco products in this state for  
29 sale in this state, (c) ships or transports tobacco products to  
30 retailers in this state, to be sold by those retailers, or (d) handles  
31 for sale any tobacco products that are within this state but upon which  
32 tax has not been imposed.

33       (3) The moneys collected under this section (~~shall~~) must be  
34 deposited into the state general fund.

35       NEW SECTION. **Sec. 1606.** A new section is added to chapter 82.26  
36 RCW to read as follows:

37       (1)(a) Within one year following the date on which the requirement

1 for a tobacco product code is effective, payment of, or exemption from,  
2 the tax imposed in RCW 82.26.020 must be verifiable on each single-unit  
3 consumer-sized can or package of moist snuff, as provided in (b) of  
4 this subsection.

5 (b) Within thirty days following the date on which notice of  
6 proposed rule making to require a tobacco product code is published in  
7 the federal register, the department must commence to develop a method  
8 for using a tobacco product code to verify payment of, or exemption  
9 from, the tax imposed in RCW 82.26.020; to develop and implement a  
10 pilot project to test the method; and to develop a plan for adoption of  
11 rules to implement the method. The department must report to the  
12 legislature on its progress annually by December 1st through the year  
13 following the year in which the method is implemented.

14 (2) If notice of proposed rule making to require a tobacco product  
15 code is not published in the federal register by July 1, 2011, the  
16 department must determine and recommend to the legislature by November  
17 1, 2014, a method to verify payment of, or exemption from, the tax  
18 imposed in RCW 82.26.020, by means of stamping, use of manufacturers'  
19 digitally readable product identifiers, or any other method, and must  
20 complete and present to the legislature a study of compliance with the  
21 tax imposed in RCW 82.26.020, the effect of noncompliance on state  
22 revenue, and the effect of adopting a method to verify payment of, or  
23 exemption from, the tax.

24 (3) For purposes of this section, "tobacco product code" means a  
25 code that is required on the label of a tobacco product for purposes of  
26 tracking or tracing the product through the distribution system under  
27 final regulations adopted by the secretary of the United States  
28 department of health and human services.

29 **Sec. 1607.** RCW 82.26.030 and 2005 c 180 s 1 are each amended to  
30 read as follows:

31 It is the intent and purpose of this chapter to levy a tax on all  
32 tobacco products sold, used, consumed, handled, or distributed within  
33 this state and to collect the tax from the distributor as defined in  
34 RCW 82.26.010. It is the further intent and purpose of this chapter to  
35 impose the tax once, and only once, on all tobacco products for sale in  
36 this state, but nothing in this chapter (~~shall~~) may be construed to  
37 exempt any person taxable under any other law or under any other tax

1 imposed under Title 82 RCW. It is the further intent and purpose of  
2 this chapter that the distributor who first possesses the tobacco  
3 product in this state (~~shall be~~) is the distributor liable for the  
4 tax and that (1) for moist snuff the tax will be based on the net  
5 weight listed by the manufacturer and (2) in most other instances the  
6 tax will be based on the actual price that the distributor paid for the  
7 tobacco product, unless the distributor is affiliated with the seller.

8 NEW SECTION. Sec. 1608. The legislature recognizes the role that  
9 tax policy plays in the levels of consumption of moist snuff by youth  
10 due to impacts on price. Discouraging youth access to moist snuff and  
11 youth consumption is an important state policy. The legislature  
12 directs the department of health, with the assistance of the department  
13 of revenue and the office of financial management, to study this issue.  
14 The study must examine the historic, current, and future trends and  
15 data, including but not limited to which products are consumed, by  
16 which age group, and how the products were acquired. The study should  
17 cover the period beginning with the year 2000, if possible. The  
18 department of health must report to the appropriate fiscal and health  
19 care committees of the legislature by December 1, 2010. The department  
20 of health may consult with academics, other experts, and industry  
21 representatives in studying this issue and preparing any reports  
22 required under this section.

23 NEW SECTION. Sec. 1609. The following acts or parts of acts are  
24 each repealed:

25 (1) RCW 82.24.027 (Additional tax imposed--Rate--Deposited into the  
26 general fund) and 2009 c 479 s 68, 2008 c 86 s 303, 1999 c 309 s 925,  
27 & 1986 c 3 s 12; and

28 (2) RCW 82.24.028 (Additional tax imposed--Rate--Deposited into the  
29 general fund) and 2009 c 479 s 69, 2008 c 86 s 304, & 2002 c 2 s 3.

30 **PART XVII**  
31 **Rural County Tax Incentive Programs**

32 **Sec. 1701.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to  
33 read as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Applicant" means a person applying for a tax deferral under  
4 this chapter.

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

6 (3) "Eligible area" means a rural county as defined in RCW  
7 82.14.370.

8 (4)(a) "Eligible investment project" means an investment project in  
9 an eligible area as defined in subsection (3) of this section.

10 (b) The lessor or owner of a qualified building is not eligible for  
11 a deferral unless:

12 (i) The underlying ownership of the buildings, machinery, and  
13 equipment vests exclusively in the same person; or

14 (ii)(A) The lessor by written contract agrees to pass the economic  
15 benefit of the deferral to the lessee;

16 (B) The lessee that receives the economic benefit of the deferral  
17 agrees in writing with the department to complete the annual survey  
18 required under RCW 82.60.070; and

19 (C) The economic benefit of the deferral passed to the lessee is no  
20 less than the amount of tax deferred by the lessor and is evidenced by  
21 written documentation of any type of payment, credit, or other  
22 financial arrangement between the lessor or owner of the qualified  
23 building and the lessee.

24 (c) "Eligible investment project" does not include any portion of  
25 an investment project undertaken by a light and power business as  
26 defined in RCW 82.16.010(~~(+5)~~) (4), other than that portion of a  
27 cogeneration project that is used to generate power for consumption  
28 within the manufacturing site of which the cogeneration project is an  
29 integral part, or investment projects which have already received  
30 deferrals under this chapter.

31 (5) "Investment project" means an investment in qualified buildings  
32 or qualified machinery and equipment, including labor and services  
33 rendered in the planning, installation, and construction of the  
34 project.

35 (6) "Manufacturing" means the same as defined in RCW 82.04.120.  
36 "Manufacturing" also includes:

37 (a) Before July 1, 2010: (i) Computer programming, the production  
38 of computer software, and other computer-related services, but only

1 when the computer programming, production of computer software, or  
2 other computer-related services are performed by a manufacturer as  
3 defined in RCW 82.04.110 and contribute to the production of a new,  
4 different, or useful substance or article of tangible personal property  
5 for sale; (ii) the activities performed by research and development  
6 laboratories and commercial testing laboratories((7)); and (iii) the  
7 conditioning of vegetable seeds; and

8 (b) Beginning July 1, 2010: (i) The activities performed by  
9 research and development laboratories and commercial testing  
10 laboratories; and (ii) the conditioning of vegetable seeds.

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

12 (8) "Qualified buildings" means construction of new structures, and  
13 expansion or renovation of existing structures for the purpose of  
14 increasing floor space or production capacity used for manufacturing  
15 ((and)) or research and development activities, including plant offices  
16 and warehouses or other facilities for the storage of raw material or  
17 finished goods if such facilities are an essential or an integral part  
18 of a factory, mill, plant, or laboratory used for manufacturing or  
19 research and development. If a building is used partly for  
20 manufacturing or research and development and partly for other  
21 purposes, the applicable tax deferral shall be determined by  
22 apportionment of the costs of construction under rules adopted by the  
23 department.

24 (9) "Qualified employment position" means a permanent full-time  
25 employee employed in the eligible investment project during the entire  
26 tax year. The term "entire tax year" means a full-time position that  
27 is filled for a period of twelve consecutive months. The term "full-  
28 time" means at least thirty-five hours a week, four hundred fifty-five  
29 hours a quarter, or one thousand eight hundred twenty hours a year.

30 (10) "Qualified machinery and equipment" means all new industrial  
31 and research fixtures, equipment, and support facilities that are an  
32 integral and necessary part of a manufacturing or research and  
33 development operation. "Qualified machinery and equipment" includes:  
34 Computers; software; data processing equipment; laboratory equipment;  
35 manufacturing components such as belts, pulleys, shafts, and moving  
36 parts; molds, tools, and dies; operating structures; and all equipment  
37 used to control or operate the machinery.

1 (11) "Recipient" means a person receiving a tax deferral under this  
2 chapter.

3 (12) "Research and development" means the development, refinement,  
4 testing, marketing, and commercialization of a product, service, or  
5 process before commercial sales have begun, but only when such  
6 activities are intended to ultimately result in the production of a  
7 new, different, or useful substance or article of tangible personal  
8 property for sale. As used in this subsection, "commercial sales"  
9 excludes sales of prototypes or sales for market testing if the total  
10 gross receipts from such sales of the product, service, or process do  
11 not exceed one million dollars.

12 **Sec. 1702.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to  
13 read as follows:

14 Unless the context clearly requires otherwise, the definitions in  
15 this section apply throughout this chapter.

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

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

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

20 (4)(a) "Eligible business project" means manufacturing or research  
21 and development activities which are conducted by an applicant in an  
22 eligible area at a specific facility, provided the applicant's average  
23 qualified employment positions at the specific facility will be at  
24 least fifteen percent greater in the four consecutive full calendar  
25 quarters after the calendar quarter during which the first qualified  
26 employment position is filled than the applicant's average qualified  
27 employment positions at the same facility in the four consecutive full  
28 calendar quarters immediately preceding the calendar quarter during  
29 which the first qualified employment position is filled.

30 (b) "Eligible business project" does not include any portion of a  
31 business project undertaken by a light and power business as defined in  
32 RCW 82.16.010(~~(+5)~~) (4) or that portion of a business project creating  
33 qualified full-time employment positions outside an eligible area.

34 (5) "First qualified employment position" means the first qualified  
35 employment position filled for which a credit under this chapter is  
36 sought.

1 (6) "Manufacturing" means the same as defined in RCW 82.04.120.

2 "Manufacturing" also includes:

3 (a) Before July 1, 2010: (i) Computer programming, the production  
4 of computer software, and other computer-related services, but only  
5 when the computer programming, production of computer software, or  
6 other computer-related services are performed by a manufacturer as  
7 defined in RCW 82.04.110 and contribute to the production of a new,  
8 different, or useful substance or article of tangible personal property  
9 for sale; and (ii) the activities performed by research and development  
10 laboratories and commercial testing laboratories; and

11 (b) Beginning July 1, 2010, the activities performed by research  
12 and development laboratories and commercial testing laboratories.

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

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

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

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

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

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

27 (ii) During a vacancy, the employer is training or actively  
28 recruiting a replacement permanent, full-time employee for the  
29 position.

30 (9) "Recipient" means a person receiving tax credits under this  
31 chapter.

32 (10) "Research and development" means the development, refinement,  
33 testing, marketing, and commercialization of a product, service, or  
34 process before commercial sales have begun, but only when such  
35 activities are intended to ultimately result in the production of a  
36 new, different, or useful substance or article of tangible personal  
37 property for sale. As used in this subsection, "commercial sales"

1 excludes sales of prototypes or sales for market testing if the total  
2 gross receipts from such sales of the product, service, or process do  
3 not exceed one million dollars.

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

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

10 **PART XVIII**

11 **Sales and Use Tax Exemptions for Data Centers**

12 NEW SECTION. **Sec. 1801.** (1) It is the legislature's intent to  
13 encourage immediate investments in technology facilities that can  
14 provide an economic stimulus, sustain long-term jobs that provide  
15 living wages, and help build the digital infrastructure that can enable  
16 the state to be competitive for additional technology investment and  
17 jobs.

18 (2) There is currently an intense competition for data center  
19 construction and operation in many states including: Oregon, Arizona,  
20 North and South Carolina, North Dakota, Iowa, Virginia, Texas, and  
21 Illinois. Unprecedented incentives are available as a result of the  
22 desire of these states to attract investments that will serve as a  
23 catalyst for additional clusters of economic activity.

24 (3) Since the economic downturn, Washington has not succeeded in  
25 attracting any private investments in these centers after siting six  
26 major data centers between 2004 and 2007.

27 (4) Data center technology has advanced rapidly, with marked  
28 increases in energy efficiency. Large, commercial-grade data centers  
29 leverage the economies of scale to reduce energy consumption.  
30 Combining digitized processes with the economies of scale recognized at  
31 these data centers, today's enterprises can materially reduce the  
32 energy they consume and greatly improve their efficiency.

33 (5) The legislature finds that a fifteen-month window that offers  
34 an exemption for server and related electrical equipment and  
35 installation will act as a stimulus to incent immediate investment.



1 This investment will bring jobs, tax revenues, and economic growth to  
2 some of our state's rural areas.

3 NEW SECTION. **Sec. 1802.** A new section is added to chapter 82.08  
4 RCW to read as follows:

5 (1) An exemption from the tax imposed by RCW 82.08.020 is provided  
6 for sales to qualifying businesses of eligible server equipment to be  
7 installed, without intervening use, in an eligible computer data  
8 center, and to charges made for labor and services rendered in respect  
9 to installing eligible server equipment. The exemption also applies to  
10 sales to qualifying businesses of eligible power infrastructure,  
11 including labor and services rendered in respect to constructing,  
12 installing, repairing, altering, or improving eligible power  
13 infrastructure.

14 (2)(a) In order to claim the exemption under this section, a  
15 qualifying business must submit an application to the department for an  
16 exemption certificate. The application must include the information  
17 necessary, as required by the department, to determine that a business  
18 qualifies for the exemption under this section. The department must  
19 issue exemption certificates to qualifying businesses. The department  
20 may assign a unique identification number to each exemption certificate  
21 issued under this section.

22 (b) A qualifying business claiming the exemption under this section  
23 must present the seller with an exemption certificate in a form and  
24 manner prescribed by the department. The seller must retain a copy of  
25 the certificate for the seller's files.

26 (3)(a) A qualifying business must establish within six years of the  
27 first day of the calendar quarter in which the business first receives  
28 an exemption under this section or section 1803 of this act that it has  
29 increased employment in the state by a minimum of thirty-five family  
30 wage jobs from the date the eligible computer data center first became  
31 operational. For purposes of this subsection, family wage jobs are new  
32 permanent employment positions requiring forty hours of weekly work, or  
33 their equivalent, on a full-time basis and paying a wage equivalent to  
34 or greater than one hundred fifty percent of the per capita personal  
35 income of the county in which the qualified project is located. The  
36 qualifying business must provide health insurance coverage for  
37 employees.

1 (b) All previously exempted sales and use taxes are immediately due  
2 and payable for a qualifying business that does not meet the  
3 requirements of this subsection.

4 (4) A qualifying business claiming an exemption under this section  
5 or section 1803 of this act must complete an annual report with the  
6 department as required under section 103, chapter . . . (Substitute  
7 House Bill No. 3066), Laws of 2010.

8 (5)(a) The exemption provided in this section does not apply to:

9 (i) Any person who has received the benefit of the deferral program  
10 under chapter 82.60 RCW on: (A) The construction, renovation, or  
11 expansion of a structure or structures used as a computer data center;  
12 or (B) machinery or equipment used in a computer data center; and

13 (ii) Any person affiliated with a person within the scope of (a)(i)  
14 of this subsection (5). For purposes of this subsection, "affiliated"  
15 means that one person has a direct or indirect ownership interest of at  
16 least twenty percent in another person.

17 (b) If a person claims an exemption under this section and  
18 subsequently receives the benefit of the deferral program under chapter  
19 82.60 RCW on either the construction, renovation, or expansion of a  
20 structure or structures used as a computer data center or machinery or  
21 equipment used in a computer data center, the person must repay the  
22 amount of taxes exempted under this section. Interest as provided in  
23 chapter 82.32 RCW applies to amounts due under this section until paid  
24 in full.

25 (6) For purposes of this section the following definitions apply  
26 unless the context clearly requires otherwise:

27 (a)(i) "Computer data center" means a facility comprised of one or  
28 more buildings constructed or refurbished specifically, and used  
29 primarily, to house working servers, where the facility has the  
30 following characteristics: (A) Uninterruptible power supplies,  
31 generator backup power, or both; (B) sophisticated fire suppression and  
32 prevention systems; and (C) enhanced physical security, such as:  
33 Restricted access to the facility to selected personnel; permanent  
34 security guards; video camera surveillance; an electronic system  
35 requiring passcodes, keycards, or biometric scans, such as hand scans  
36 and retinal or fingerprint recognition; or similar security features.

37 (ii) For a computer data center comprised of multiple buildings,  
38 each separate building constructed or refurbished specifically, and

1 used primarily, to house working servers is considered a computer data  
2 center if it has all of the characteristics listed in (a)(i)(A) through  
3 (C) of this subsection (6).

4 (b) "Electronic data storage and data management services" include,  
5 but are not limited to: Providing data storage and backup services,  
6 providing computer processing power, hosting enterprise software  
7 applications, and hosting web sites. The term also includes providing  
8 services such as e-mail, web browsing and searching, media  
9 applications, and other online services, regardless of whether a charge  
10 is made for such services.

11 (c)(i) "Eligible computer data center" means a computer data  
12 center:

13 (A) Located in a rural county as defined in RCW 82.14.370;

14 (B) Having at least twenty thousand square feet dedicated to  
15 housing working servers, where the server space has not previously been  
16 dedicated to housing working servers; and

17 (C) For which the commencement of construction occurs after March  
18 31, 2010, and before July 1, 2011. For purposes of this section,  
19 "commencement of construction" means the date that a building permit is  
20 issued under the building code adopted under RCW 19.27.031 for  
21 construction of the computer data center. The construction of a  
22 computer data center includes the expansion, renovation, or other  
23 improvements made to existing facilities, including leased or rented  
24 space. "Commencement of construction" does not include soil testing,  
25 site clearing and grading, site preparation, or any other related  
26 activities that are initiated before the issuance of a building permit  
27 for the construction of the foundation of a computer data center.

28 (ii) With respect to facilities in existence on the effective date  
29 of this section that are expanded, renovated, or otherwise improved  
30 after March 31, 2010, an eligible computer data center includes only  
31 the portion of the computer data center meeting the requirements in  
32 (c)(i)(B) of this subsection (6).

33 (d) "Eligible power infrastructure" means all fixtures and  
34 equipment necessary for the transformation, distribution, or management  
35 of electricity that is required to operate eligible server equipment  
36 within an eligible computer data center. The term includes electrical  
37 substations, generators, wiring, and cogeneration equipment.

1 (e) "Eligible server equipment" means the original server equipment  
2 installed in an eligible computer data center on or after April 1,  
3 2010, and replacement server equipment. For purposes of this  
4 subsection (6)(e), "replacement server equipment" means server  
5 equipment that: (i) Replaces existing server equipment, if the sale or  
6 use of the server equipment to be replaced qualified for an exemption  
7 under this section or section 1803 of this act; and (ii) is installed  
8 and put into regular use before April 1, 2018.

9 (f) "Qualifying business" means a business entity that exists for  
10 the primary purpose of engaging in commercial activity for profit and  
11 that is the owner or lessee of an eligible computer data center. The  
12 term does not include the state or federal government or any of their  
13 departments, agencies, and institutions; tribal governments; political  
14 subdivisions of this state; or any municipal, quasi-municipal, public,  
15 or other corporation created by the state or federal government, tribal  
16 government, municipality, or political subdivision of the state.

17 (g) "Server" means blade or rack-mount server computers used in a  
18 computer data center exclusively to provide electronic data storage and  
19 data management services for internal use by the owner or lessee of the  
20 computer data center, for clients of the owner or lessee of the  
21 computer data center, or both. "Server" does not include personal  
22 computers.

23 (h) "Server equipment" means the server chassis and all computer  
24 hardware contained within the server chassis. "Server equipment" also  
25 includes computer software necessary to operate the server. "Server  
26 equipment" does not include the racks upon which the server chassis is  
27 installed, and computer peripherals such as keyboards, monitors,  
28 printers, mice, and other devices that work outside of the computer.

29 (7) This section expires April 1, 2018.

30 NEW SECTION. **Sec. 1803.** A new section is added to chapter 82.12  
31 RCW to read as follows:

32 (1) An exemption from the tax imposed by RCW 82.12.020 is provided  
33 for the use by qualifying businesses of eligible server equipment to be  
34 installed, without intervening use, in an eligible computer data  
35 center, and to the use of labor and services rendered in respect to  
36 installing such server equipment. The exemption also applies to the

1 use of power infrastructure, including labor and services rendered in  
2 respect to installing, repairing, altering, or improving such  
3 infrastructure.

4 (2) A qualifying business is not eligible for the exemption under  
5 this section unless the department issued an exemption certificate to  
6 the qualifying business for the exemption provided in section 1802 of  
7 this act.

8 (3)(a) The exemption provided in this section does not apply to:

9 (i) Any person who has received the benefit of the deferral program  
10 under chapter 82.60 RCW on: (A) The construction, renovation, or  
11 expansion of a structure or structures used as a computer data center;  
12 or (B) machinery or equipment used in a computer data center; and

13 (ii) Any person affiliated with a person within the scope of (a)(i)  
14 of this subsection (3). For purposes of this subsection, "affiliated"  
15 means that one person has a direct or indirect ownership interest of at  
16 least twenty percent in another person.

17 (b) If a person has received the benefit of the exemption under  
18 this section and subsequently receives the benefit of the deferral  
19 program under chapter 82.60 RCW on either the construction, renovation,  
20 or expansion of a structure or structures used as a computer data  
21 center or machinery or equipment used in a computer data center, the  
22 person must repay the amount of taxes exempted under this section.  
23 Interest as provided in chapter 82.32 RCW applies to amounts due under  
24 this subsection (3)(b) until paid in full. A person is not required to  
25 repay taxes under this subsection with respect to property and services  
26 for which the person is required to repay taxes under section 1802(5)  
27 of this act.

28 (4) The definitions in section 1802 of this act apply to this  
29 section.

30 (5) This section expires April 1, 2018.

31 **PART XIX**

32 **PUD Privilege Tax Clarification**

33 **Sec. 1901.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to  
34 read as follows:

35 "Gross revenue" (~~shall~~) means the amount received from the sale  
36 of electric energy, which also includes any regularly recurring charge

1 billed to consumers as a condition of receiving electric energy, and  
2 excluding any tax levied by a municipal corporation upon the district  
3 pursuant to RCW 54.28.070.

4 **PART XX**

5 **Business and Occupation Surtax on Certain Services**

6 NEW SECTION. **Sec. 2001.** In order to preserve education funding,  
7 it is the legislature's intent to use revenue generated from increasing  
8 the business and operations on certain business services to support  
9 basic education including levy equalization and dropout prevention  
10 programs.

11 NEW SECTION. **Sec. 2002.** A new section is added to chapter 82.04  
12 RCW to read as follows:

13 (1) There is levied and collected for the period July 1, 2010,  
14 through June 30, 2015, from every person for the act or privilege of  
15 engaging in any business activity defined as a selected business  
16 service, an additional tax equal to the gross income of the business  
17 from such activity multiplied by the rate of 0.5 percent.

18 (2) For the purpose of this section, "selected business service"  
19 means:

- 20 (a) Accounting, tax preparation, bookkeeping, payroll, services;
- 21 (b) Agent and management services for artists, athletes,  
22 entertainers, and other public figures;
- 23 (c) Attorney and paralegal services;
- 24 (d) Management, scientific, and technical consulting services  
25 including but not limited to: Administrative management services,  
26 human resource consulting services, marketing consulting services,  
27 logistic consulting services, and environmental consulting services;
- 28 (e) Marketing research and public opinion polling services; and
- 29 (f) Promoting services for performing arts, sporting, and similar  
30 events.

31 **PART XXI**

32 **Limiting B&O Exemption on Investment Earnings for Nonfinancial Firms**

1        NEW SECTION.    **Sec. 2101.**    In order to preserve education funding,  
2 it is the legislature's intent to use revenue generated from repealing  
3 the business and operations exemption on investment earnings for  
4 nonfinancial firms to support basic education including levy  
5 equalization and dropout prevention programs.

6        **Sec. 2102.**    RCW 82.04.4281 and 2007 c 54 s 9 are each amended to  
7 read as follows:

8        (1) In computing tax there may be deducted from the measure of tax:

9        (a) Amounts derived from investments;

10       (b) Amounts derived as dividends or distributions from the capital  
11 account by a parent from its subsidiary entities; and

12       (c) Amounts derived from interest on loans between subsidiary  
13 entities and a parent entity or between subsidiaries of a common parent  
14 entity, but only if the total investment and loan income is less than  
15 five percent of gross receipts of the business annually.

16       (2) The following are not deductible under subsection (1)(a) of  
17 this section:

18       (a) Amounts received from loans, except as provided in subsection  
19 (1)(c) of this section, or the extension of credit to another,  
20 revolving credit arrangements, installment sales, the acceptance of  
21 payment over time for goods or services, or any of the foregoing that  
22 have been transferred by the originator of the same to an affiliate of  
23 the transferor; or

24       (b) Amounts received by a banking, lending, or security business.

25       (3) The total amount a person may deduct under this section for any  
26 calendar year may not exceed two hundred fifty thousand dollars.

27       (4) The definitions in this subsection apply only to this section.

28       (a) "Banking business" means a person engaging in business as a  
29 national or state-chartered bank, a mutual savings bank, a savings and  
30 loan association, a trust company, an alien bank, a foreign bank, a  
31 credit union, a stock savings bank, or a similar entity that is  
32 chartered under Title 30, 31, 32, or 33 RCW, or organized under Title  
33 12 U.S.C.

34       (b) "Lending business" means a person engaged in the business of  
35 making secured or unsecured loans of money, or extending credit, and

36       (i) more than one-half of the person's gross income is earned from such

1 activities and (ii) more than one-half of the person's total  
2 expenditures are incurred in support of such activities.

3 (c) The terms "loan" and "extension of credit" do not include  
4 ownership of or trading in publicly traded debt instruments, or  
5 substantially equivalent instruments offered in a private placement.

6 (d) "Security business" means a person, other than an issuer, who  
7 is engaged in the business of effecting transactions in securities as  
8 a broker, dealer, or broker-dealer, as those terms are defined in the  
9 securities act of Washington, chapter 21.20 RCW, or the federal  
10 securities act of 1933. "Security business" does not include any  
11 company excluded from the definition of broker or dealer under the  
12 federal investment company act of 1940 or any entity that is not an  
13 investment company by reason of sections 3(c)(1) and 3(c)(3) through  
14 3(c)(14) thereof.

15 **PART XXII**

16 **Sales and Use Tax Exemptions for Machinery**  
17 **and Equipment Used in Renewable Energy Generation**

18 NEW SECTION. **Sec. 2201.** In order to preserve funding to protect  
19 Washington's natural resources, it is the legislature's intent to use  
20 revenue realized from limiting the sales and use tax exemption for  
21 machinery and equipment to support renewable energy generation and  
22 natural resource protection activities.

23 **Sec. 2202.** RCW 82.08.962 and 2009 c 469 s 101 are each amended to  
24 read as follows:

25 (1)(a) Except as provided in RCW 82.08.963, purchasers who have  
26 paid the tax imposed by RCW 82.08.020 on machinery and equipment used  
27 directly in generating electricity using fuel cells, wind, sun, biomass  
28 energy, tidal or wave energy, geothermal resources, anaerobic  
29 digestion, technology that converts otherwise lost energy from exhaust,  
30 or landfill gas as the principal source of power, or to sales of or  
31 charges made for labor and services rendered in respect to installing  
32 such machinery and equipment, are eligible for an exemption as provided  
33 in this section, but only if the purchaser develops with such  
34 machinery, equipment, and labor a facility capable of generating not  
35 less than one thousand watts of electricity.



1           (b) Except for energy generated by wind, beginning on July 1, 2009,  
2 through June 30, 2011, the tax levied by RCW 82.08.020 does not apply  
3 to the sale of machinery and equipment described in (a) of this  
4 subsection that are used directly in generating electricity or to sales  
5 of or charges made for labor and services rendered in respect to  
6 installing such machinery and equipment.

7           (c)(i) For energy generated by wind, except as provided otherwise  
8 in (ii) of this subsection (c), beginning on July 1, 2010, through June  
9 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale to  
10 a local electric utility, or to a person contracting with a local  
11 electric utility for the sale of electric power generated by a facility  
12 containing such machinery and equipment, of machinery and equipment  
13 described in (a) of this subsection that are used directly in  
14 generating electricity or to sales of or charges made for labor and  
15 services rendered in respect to installing such machinery and  
16 equipment.

17           (ii) Any project using wind to generate electricity, which begins  
18 construction by December 31, 2010, may receive the exemption from sales  
19 tax under this section.

20           (d) Except for energy generated by wind, beginning on July 1, 2011,  
21 through June 30, 2013, the amount of the exemption under this  
22 subsection (1) is equal to seventy-five percent of the state and local  
23 sales tax paid. The purchaser is eligible for an exemption under this  
24 subsection (1)(d) in the form of a remittance.

25           (e)(i) For energy generated by wind, except as provided otherwise  
26 in (ii) of this subsection (e), beginning on July 1, 2011, through June  
27 30, 2013, the amount of the exemption under this subsection (1) is  
28 equal to seventy-five percent of the state and local sales tax paid by  
29 a local electric utility for such machinery and equipment, or to a  
30 person contracting with a local electric utility for the sale of  
31 electric power generated by a facility containing such machinery and  
32 equipment. The purchaser is eligible for an exemption under this  
33 subsection (1)((+e)) (e) in the form of a remittance.

34           (ii) Any project using wind to generate electricity, which begins  
35 construction by December 31, 2010, may receive the exemption from sales  
36 tax under this section.

37           (2) For purposes of this section and RCW 82.12.962, the following  
38 definitions apply:

1 (a) "Biomass energy" includes: (i) By-products of pulping and wood  
2 manufacturing process; (ii) animal waste; (iii) solid organic fuels  
3 from wood; (iv) forest or field residues; (v) wooden demolition or  
4 construction debris; (vi) food waste; (vii) liquors derived from algae  
5 and other sources; (viii) dedicated energy crops; (ix) biosolids; and  
6 (x) yard waste. "Biomass energy" does not include wood pieces that  
7 have been treated with chemical preservatives such as creosote,  
8 pentachlorophenol, or copper-chrome-arsenic; wood from old growth  
9 forests; or municipal solid waste.

10 (b) "Fuel cell" means an electrochemical reaction that generates  
11 electricity by combining atoms of hydrogen and oxygen in the presence  
12 of a catalyst.

13 (c) "Landfill gas" means biomass fuel, of the type qualified for  
14 federal tax credits under Title 26 U.S.C. Sec. 29 of the federal  
15 internal revenue code, collected from a "landfill" as defined under RCW  
16 70.95.030.

17 (d)(i) "Machinery and equipment" means fixtures, devices, and  
18 support facilities that are integral and necessary to the generation of  
19 electricity using fuel cells, wind, sun, biomass energy, tidal or wave  
20 energy, geothermal resources, anaerobic digestion, technology that  
21 converts otherwise lost energy from exhaust, or landfill gas as the  
22 principal source of power.

23 (ii) "Machinery and equipment" does not include: (A) Hand-powered  
24 tools; (B) property with a useful life of less than one year; (C)  
25 repair parts required to restore machinery and equipment to normal  
26 working order; (D) replacement parts that do not increase productivity,  
27 improve efficiency, or extend the useful life of machinery and  
28 equipment; (E) buildings; or (F) building fixtures that are not  
29 integral and necessary to the generation of electricity that are  
30 permanently affixed to and become a physical part of a building.

31 (e) "Local electric utility" means an electrical company whose  
32 rates are regulated by the Washington utilities and transportation  
33 commission under chapter 80.28 RCW; a municipal electric utility formed  
34 under Title 35 RCW, a public utility district formed under Title 54  
35 RCW, an irrigation district formed under chapter 87.03 RCW, a  
36 cooperative formed under chapter 23.86 RCW, or a mutual corporation or  
37 association formed under chapter 24.06 RCW, that is engaged in the

1 business of distributing electricity to more than one retail electric  
2 customer in the state; and a joint operating agency formed under  
3 chapter 43.52 RCW.

4 (f) "Person" means the same as defined under RCW 82.04.030.

5 (3)(a) Machinery and equipment is "used directly" in generating  
6 electricity by wind energy, solar energy, biomass energy, tidal or wave  
7 energy, geothermal resources, anaerobic digestion, technology that  
8 converts otherwise lost energy from exhaust, or landfill gas power if  
9 it provides any part of the process that captures the energy of the  
10 wind, sun, biomass energy, tidal or wave energy, geothermal resources,  
11 anaerobic digestion, technology that converts otherwise lost energy  
12 from exhaust, or landfill gas, converts that energy to electricity, and  
13 stores, transforms, or transmits that electricity for entry into or  
14 operation in parallel with electric transmission and distribution  
15 systems.

16 (b) Machinery and equipment is "used directly" in generating  
17 electricity by fuel cells if it provides any part of the process that  
18 captures the energy of the fuel, converts that energy to electricity,  
19 and stores, transforms, or transmits that electricity for entry into or  
20 operation in parallel with electric transmission and distribution  
21 systems.

22 (4)(a) A purchaser claiming an exemption in the form of a  
23 remittance under subsection (1)((+e)) (d) of this section must pay the  
24 tax imposed by RCW 82.08.020 and all applicable local sales taxes  
25 imposed under the authority of chapters 82.14 and 81.104 RCW. The  
26 purchaser may then apply to the department for remittance in a form and  
27 manner prescribed by the department. A purchaser may not apply for a  
28 remittance under this section more frequently than once per quarter.  
29 The purchaser must specify the amount of exempted tax claimed and the  
30 qualifying purchases for which the exemption is claimed. The purchaser  
31 must retain, in adequate detail, records to enable the department to  
32 determine whether the purchaser is entitled to an exemption under this  
33 section, including: Invoices; proof of tax paid; and documents  
34 describing the machinery and equipment.

35 (b) The department must determine eligibility under this section  
36 based on the information provided by the purchaser, which is subject to  
37 audit verification by the department. The department must on a

1 quarterly basis remit exempted amounts to qualifying purchasers who  
2 submitted applications during the previous quarter.

3 (5) This section expires July 1, 2013.

4 **Sec. 2203.** RCW 82.12.962 and 2009 c 469 s 102 are each amended to  
5 read as follows:

6 (1)(a) Except as provided in RCW 82.12.963, consumers who have paid  
7 the tax imposed by RCW 82.12.020 on machinery and equipment used  
8 directly in generating electricity using fuel cells, wind, sun, biomass  
9 energy, tidal or wave energy, geothermal resources, anaerobic  
10 digestion, technology that converts otherwise lost energy from exhaust,  
11 or landfill gas as the principal source of power, or to sales of or  
12 charges made for labor and services rendered in respect to installing  
13 such machinery and equipment, are eligible for an exemption as provided  
14 in this section, but only if the purchaser develops with such  
15 machinery, equipment, and labor a facility capable of generating not  
16 less than one thousand watts of electricity.

17 (b) Except for energy generated by wind, beginning on July 1, 2009,  
18 through June 30, 2011, the provisions of this chapter do not apply in  
19 respect to the use of machinery and equipment described in (a) of this  
20 subsection that are used directly in generating electricity or to sales  
21 of or charges made for labor and services rendered in respect to  
22 installing such machinery and equipment.

23 (c)(i) For energy generated by wind, except as provided otherwise  
24 in (ii) of this subsection (c), beginning on July 1, 2010, through June  
25 30, 2011, the provisions of this chapter do not apply in respect to the  
26 use by a local electric utility, or by a person contracting with a  
27 local electric utility for the sale of electric power generated by a  
28 facility containing such machinery and equipment, of machinery and  
29 equipment described in (a) of this subsection that are used directly in  
30 generating electricity or to sales of or charges made for labor and  
31 services rendered in respect to installing such machinery and  
32 equipment.

33 (ii) Any project using wind to generate electricity, which begins  
34 construction by December 31, 2010, may receive the exemption from use  
35 tax under this section.

36 (d) Except for energy generated by wind, beginning on July 1, 2011,  
37 through June 30, 2013, the amount of the exemption under this

1 subsection (1) is equal to seventy-five percent of the state and local  
2 sales tax paid. The purchaser is eligible for an exemption under this  
3 subsection (1)(d) in the form of a remittance.

4 (e)(i) For energy generated by wind, except as provided otherwise  
5 in (ii) of this subsection (e), beginning on July 1, 2011, through June  
6 30, 2013, the amount of the exemption under this subsection (1) is  
7 equal to seventy-five percent of the state and local sales tax paid by  
8 a local electric utility for such machinery and equipment, or to a  
9 person contracting with a local electric utility for the sale of  
10 electric power generated by a facility containing such machinery and  
11 equipment. The consumer is eligible for an exemption under this  
12 subsection (1)((+e)) (e) in the form of a remittance.

13 (ii) Any project using wind to generate electricity, which begins  
14 construction by December 31, 2010, may receive the exemption from use  
15 tax under this section.

16 (2)(a) A person claiming an exemption in the form of a remittance  
17 under subsection (1)((+e)) (e) of this section must pay the tax  
18 imposed by RCW 82.12.020 and all applicable local use taxes imposed  
19 under the authority of chapters 82.14 and 81.104 RCW. The consumer may  
20 then apply to the department for remittance in a form and manner  
21 prescribed by the department. A consumer may not apply for a  
22 remittance under this section more frequently than once per quarter.  
23 The consumer must specify the amount of exempted tax claimed and the  
24 qualifying purchases or acquisitions for which the exemption is  
25 claimed. The consumer must retain, in adequate detail, records to  
26 enable the department to determine whether the consumer is entitled to  
27 an exemption under this section, including: Invoices; proof of tax  
28 paid; and documents describing the machinery and equipment.

29 (b) The department must determine eligibility under this section  
30 based on the information provided by the consumer, which is subject to  
31 audit verification by the department. The department must on a  
32 quarterly basis remit exempted amounts to qualifying consumers who  
33 submitted applications during the previous quarter.

34 (3) Purchases exempt under RCW 82.08.962 are also exempt from the  
35 tax imposed under RCW 82.12.020.

36 (4) The definitions in RCW 82.08.962 apply to this section.

37 (5) This section expires June 30, 2013.

1 **PART XXIII**

2 **Miscellaneous Provisions**

3 NEW SECTION. **Sec. 2301.** (1) Except as provided in subsection (2)  
4 of this section, if any provision of sections 101 through 108 of this  
5 act or its application to any person or circumstance is held invalid,  
6 the remainder of sections 101 through 108 of this act or the  
7 application of the provision to other persons or circumstances is not  
8 affected.

9 (2) If a court of competent jurisdiction, in a final judgment not  
10 subject to appeal, adjudges any provision of section 104(1)(c) of this  
11 act unconstitutional or otherwise invalid, sections 101 through 108 of  
12 this act are null and void in their entirety.

13 NEW SECTION. **Sec. 2302.** Sections 101 through 108 of this act  
14 apply with respect to gross income of the business, as defined in RCW  
15 82.04.080, including gross income from royalties as defined in RCW  
16 82.04.2907, generated on and after April 1, 2010. For purposes of  
17 calculating the thresholds in section 104(1)(c) of this act for the  
18 2010 tax year, property, payroll, and receipts are based on the entire  
19 2010 tax year.

20 NEW SECTION. **Sec. 2303.** Sections 201 through 213 of this act must  
21 be construed liberally to effectuate the legislature's intent to ensure  
22 that all businesses and individuals pay their fair share of taxes.

23 NEW SECTION. **Sec. 2304.** (1) Except as provided in subsection (2)  
24 of this section, section 201 of this act applies to tax periods  
25 beginning January 1, 2006.

26 (2) Section 201 of this act does not apply to any tax periods  
27 ending before April 1, 2010, that were included in a completed field  
28 audit conducted by the department.

29 NEW SECTION. **Sec. 2305.** Sections 502, 802, 1701, and 1702 of this  
30 act apply both retroactively and prospectively.

31 NEW SECTION. **Sec. 2306.** In accordance with Article VIII, section  
32 5 of the state Constitution, sections 802 and 2305 of this act do not  
33 authorize refunds of business and occupation tax validly collected

1 before April 1, 2010, on amounts received by an individual from a  
2 corporation as compensation for serving as a member of that  
3 corporation's board of directors.

4 NEW SECTION. **Sec. 2307.** Section 502 of this act does not affect  
5 any final judgments, not subject to appeal, entered by a court of  
6 competent jurisdiction before the effective date of this section.

7 NEW SECTION. **Sec. 2308.** Sections 1101 and 1102 of this act apply  
8 to transfers or conveyances as described in RCW 82.45.010(3)(i)  
9 occurring on and after April 1, 2010.

10 NEW SECTION. **Sec. 2309.** Section 1602 of this act applies only  
11 with respect to tax liability incurred under chapter 82.24 RCW on or  
12 after April 1, 2010, for the sale, use, consumption, handling,  
13 possession, or distribution of cigarettes.

14 NEW SECTION. **Sec. 2310.** Section 1605(1) (a), (b), and (d) of this  
15 act applies only with respect to tax liability incurred under chapter  
16 82.24 RCW on or after April 1, 2010, for the sale, handling, or  
17 distribution of cigars, little cigars, and other tobacco products.

18 NEW SECTION. **Sec. 2311.** Section 1605(1)(c), chapter . . ., Laws  
19 of 2010 (this act) applies only with respect to tax liability incurred  
20 under chapter 82.24 RCW on or after October 1, 2010, for the sale,  
21 handling, or distribution of moist snuff.

22 NEW SECTION. **Sec. 2312.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 2313.** Sections 501, 502, and 2305 of this act  
27 are necessary for the immediate preservation of the public peace,  
28 health, or safety, or support of the state government and its existing  
29 public institutions, and take effect immediately.

1        NEW SECTION.    **Sec. 2314.**    Except for sections 501, 502, 606, 1601  
2 through 1604, 1701, 1702, and 2305 of this act, this act is necessary  
3 for the immediate preservation of the public peace, health, or safety,  
4 or support of the state government and its existing public  
5 institutions, and takes effect April 1, 2010.

6        NEW SECTION.    **Sec. 2315.**    Sections 1701 and 1702 of this act take  
7 effect July 1, 2010.

8        NEW SECTION.    **Sec. 2316.**    Section 605 of this act expires July 1,  
9 2011.

10       NEW SECTION.    **Sec. 2317.**    Section 606 of this act takes effect July  
11 1, 2011.

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