
SENATE BILL 5756

State of Washington 63rd Legislature 2013 Regular Session

By Senators Hasegawa, Conway, Kline, Nelson, Keiser, and Kohl-Welles

Read first time 02/13/13. Referred to Committee on Ways & Means.

1 AN ACT Relating to community reinvestment of oil windfall profits;
2 adding a new title to the Revised Code of Washington to be codified as
3 Title 82A RCW; prescribing penalties; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context clearly
6 requires otherwise, the definitions in this section apply throughout
7 this title. Except as provided in this section, any term used in this
8 title has the same meaning as when used in a comparable context in the
9 internal revenue code.

10 (1) "Affiliated corporation" means a corporation that is a member
11 of a group of two or more corporations with a common owner or owners,
12 either corporate or noncorporate, when more than fifty percent of the
13 voting stock of each member corporation is directly or indirectly owned
14 by the common owner or owners or by one or more of the member
15 corporations.

16 (2) "Business activity" means any activity engaged in with the
17 object of gain, benefit, or advantage to the taxpayer or to another
18 person or class, directly or indirectly.

1 (3) "Corporation" means any corporation as defined by the laws of
2 this state or organization of any kind treated as a corporation for tax
3 purposes under the laws of this state, wherever located, which if it
4 were doing business in this state would be a taxpayer. The business
5 conducted by a partnership which is directly or indirectly held by a
6 corporation is considered the business of the corporation to the extent
7 of the corporation's distributive share of the partnership income,
8 inclusive of guaranteed payments to the extent prescribed by rule.

9 (4) "Combined group" means the group of all persons whose income
10 and apportionment factors are required to be taken into account under
11 section 8 (1) or (2) of this act in determining the taxpayer's share of
12 the net business income or loss apportionable to this state.

13 (5) "Department" means the department of revenue.

14 (6) "Gasoline price" means the average of the retail gasoline
15 prices published during the taxable year for the west coast less
16 California, as published by the federal energy information
17 administration or its successor agency.

18 (7) "Internal revenue code" means Title 26 of the United States
19 Code of 1986, and amendments thereto, as existing on January 1, 2011.

20 (8) "Person" means any individual, firm, partnership, general
21 partner of a partnership, limited liability company, registered limited
22 liability partnership, foreign limited liability partnership,
23 association, corporation (whether or not the corporation is, or would
24 be if doing business in this state, subject to tax under this title),
25 company, syndicate, estate, trust, business trust, trustee, trustee in
26 bankruptcy, receiver, executor, administrator, assignee, or
27 organization of any kind.

28 (9) "Partnership" means a general or limited partnership, or
29 organization of any kind treated as a partnership for business purposes
30 under the laws of this state.

31 (10) "Petroleum business" means a corporation engaged in any of the
32 following activities: Exploration, production, refining,
33 manufacturing, processing, transportation, and marketing of oil and gas
34 or any commodity, product, or feedstock derived from oil or gas,
35 including petrochemicals.

36 (11) "Petroleum refining" means refining crude petroleum into
37 refined petroleum by fractionation, straight distillation of crude oil,
38 cracking, or similar methods.

1 (12) "Tax haven" means a jurisdiction that, during the tax year in
2 question:

3 (a) Is identified by the organization for economic cooperation and
4 development (OECD) as a tax haven or as having a harmful preferential
5 tax regime; or

6 (b) Exhibits the following characteristics established by the OECD
7 in its 1998 report entitled harmful tax competition: An emerging
8 global issue as indicative of a tax haven or as a jurisdiction having
9 a harmful preferential tax regime, regardless of whether it is listed
10 by the OECD as an uncooperative tax haven:

11 (i) Has no or nominal effective tax on the relevant income; and

12 (ii)(A) Has laws or practices that prevent effective exchange of
13 information for tax purposes with other governments on taxpayers
14 benefiting from the tax regime;

15 (B) Has tax regime which lacks transparency. A tax regime lacks
16 transparency if the details of legislative, legal, or administrative
17 provisions are not open and apparent or are not consistently applied
18 among similarly situated taxpayers, or if the information needed by tax
19 authorities to determine a taxpayer's correct tax liability, such as
20 accounting records and underlying documentation, is not adequately
21 available;

22 (C) Facilitates the establishment of foreign-owned entities without
23 the need for a local substantive presence or prohibits these entities
24 from having any commercial impact on the local economy;

25 (D) Explicitly or implicitly excludes the jurisdiction's resident
26 taxpayers from taking advantage of the tax regime's benefits or
27 prohibits enterprises that benefit from the regime from operating in
28 the jurisdiction's domestic market; or

29 (E) Has created a tax regime which is favorable for tax avoidance,
30 based upon an overall assessment of relevant factors, including whether
31 the jurisdiction has a significant untaxed offshore financial/other
32 services sector relative to its overall economy.

33 (13) "Taxable income" means federal taxable income after making the
34 additions, subtractions, apportionments, and allocations provided under
35 this title.

36 (14) "Taxable year" means the taxpayer's taxable year as defined
37 under the internal revenue code.

1 (15) "Taxpayer" means a corporation receiving income subject to tax
2 under this title.

3 (16) "Unitary business" means a single economic enterprise that is
4 made up either of separate parts of a single business entity or of a
5 commonly controlled group of business entities that are sufficiently
6 interdependent, integrated, and interrelated through their activities
7 so as to provide a synergy and mutual benefit that produces a sharing
8 or exchange of value among them and a significant flow of value to the
9 separate parts. Any business conducted by a partnership must be
10 treated as conducted by its partners, whether directly held or
11 indirectly held through a series of partnerships, to the extent of the
12 partner's distributive share of the partnership's income, regardless of
13 the percentage of the partner's ownership interest or its distributive
14 or any other share of partnership income. A business conducted
15 directly or indirectly by one corporation is unitary with that portion
16 of a business conducted by another corporation through its direct or
17 indirect interest in a partnership if the conditions under this
18 subsection are satisfied.

19 (17) "United States" means the fifty states of the United States,
20 the District of Columbia, and United States' territories and
21 possessions.

22 NEW SECTION. **Sec. 2.** PRIVILEGE TAX IMPOSED. A tax is imposed for
23 each taxable year on the taxable income of each petroleum business for
24 the privilege of engaging in any business activity within this state.
25 The tax is equal to the taxable income multiplied by the rate according
26 to the following table.

27

28 If the gasoline price is:	The tax rate is:
29 Less than \$1.75	zero
30 Equal to or greater than \$1.75, but less than \$1.85	10%
31 Equal to or greater than \$1.85, but less than \$1.95	12%
32 Equal to or greater than \$1.95, but less than \$2.05	14%
33 Equal to or greater than \$2.05, but less than \$2.15	16%
34 Equal to or greater than \$2.15, but less than \$2.25	18%
35 Equal to or greater than \$2.25, but less than \$2.35	20%

1	Equal to or greater than \$2.35, but less than \$2.45	22%
2	Equal to or greater than \$2.45, but less than \$2.55	24%
3	Equal to or greater than \$2.55, but less than \$2.65	26%
4	Equal to or greater than \$2.65, but less than \$2.75	28%
5	Equal to or greater than \$2.75	30%

6 NEW SECTION. **Sec. 3.** EXEMPTION. The tax imposed under this title
7 does not apply to a corporation if neither the corporation nor any
8 affiliated corporation engages in any petroleum refining within or
9 outside this state during the taxable year or the five preceding years.

10 NEW SECTION. **Sec. 4.** TAXABLE INCOME MODIFICATIONS. In computing
11 taxable income, modifications must be made to the taxpayer's federal
12 taxable income as required under this section, unless the modification
13 has the effect of duplicating an item of income or deduction.

14 (1) Add amounts that have been deducted in computing federal
15 taxable income to the extent the amounts have been carried over from
16 taxable years ending before the effective date of this section.

17 (2) Add amounts that have been deducted in computing federal
18 taxable income to the extent the amounts have been carried back from
19 future taxable years.

20 (3) Add taxes on or measured by net income that have been deducted
21 under the internal revenue code in computing federal taxable income.

22 (4) Add gross income that has been excluded under section 103 of
23 the internal revenue code in computing federal taxable income, except
24 gross income derived from obligations of the state of Washington or
25 political subdivisions of the state of Washington. However, the amount
26 added under this subsection must be reduced by any expenses incurred in
27 the production of amounts added under this subsection, to the extent
28 the expenses have not been deducted in computing federal taxable
29 income.

30 (5) Deduct gross income that the state is prohibited from taxing
31 under the Constitution or laws of the United States, to the extent the
32 gross income was included in computing federal taxable income.
33 However, the amount deducted under this subsection must be reduced by
34 any expenses incurred in the production of amounts subtracted under
35 this subsection, to the extent the expenses have been deducted in
36 computing federal taxable income.

1 (6) Deduct income attributable to activities subject to tax under
2 chapter 82.04 RCW for periods prior to the effective date of this
3 section, to the extent the gross income was included in computing
4 federal taxable income. However, the amount deducted under this
5 subsection must be reduced by any expenses incurred in the production
6 of such income, to the extent the expenses have been deducted in
7 computing federal taxable income.

8 (7) Deduct income attributable to activities subject to tax under
9 chapter 82.16 RCW, to the extent the gross income was included in
10 computing federal taxable income. However, the amount deducted under
11 this subsection must be reduced by any expenses incurred in the
12 production of such income to the extent the expenses have been deducted
13 in calculating federal taxable income.

14 (8) Deduct income attributable to insurance business upon which a
15 tax based on gross premiums is paid to the state. However, the amount
16 deducted under this subsection must be reduced by any expense incurred
17 in the production of such income to the extent the expense has been
18 deducted in calculating federal taxable income.

19 (9) Add amounts upon which an S corporation is subject to tax under
20 subchapter S, chapter 1, subtitle A of the internal revenue code.

21 (10) Add amounts that have been deducted as intangible drilling and
22 development expenses under Sec. 263(c) of the internal revenue code in
23 excess of amounts that would have been deducted had the expenses been
24 capitalized and depreciated.

25 (11) Add amounts deducted on the percentage depletion basis under
26 Sec. 613 of the internal revenue code in excess of the amounts that
27 would have been deducted had the expenses been determined using the
28 cost depletion basis under Sec. 612 of the internal revenue code.

29 (12) Add amounts deducted as depreciation in excess of the amounts
30 allowable under Sec. 167 of the internal revenue code as that section
31 read on June 30, 1981.

32 NEW SECTION. **Sec. 5.** TAX RETURNS FOR FRACTIONAL YEAR. If the
33 first taxable year of any taxpayer with respect to which a tax is
34 imposed by this title ends before December 31st of the calendar year in
35 which this title becomes effective, referred to in this section as a
36 fractional taxable year, the taxable income for the fractional taxable

1 year is the taxpayer's taxable income for the entire taxable year,
2 adjusted by one of the following methods, at the taxpayer's election:

3 (1) The taxable income must be multiplied by a fraction. The
4 numerator of the fraction is the number of days in the fractional
5 taxable year. The denominator of the fraction is the number of days in
6 the entire taxable year.

7 (2) The taxable income must be adjusted, in accordance with rules
8 of the department, so as to include only such income and be reduced
9 only by such deductions as can be clearly determined from the permanent
10 records of the taxpayer to be attributable to the fractional taxable
11 year.

12 NEW SECTION. **Sec. 6.** ESTIMATION AGREEMENTS. The department may
13 reasonably estimate the items of business or nonbusiness income of a
14 taxpayer having an office within the state and one or more other states
15 or foreign countries that may be apportioned or allocated to the state
16 and may enter into estimation agreements with such taxpayers for the
17 determination of their liability for the tax imposed by this title.

18 NEW SECTION. **Sec. 7.** APPORTIONMENT AND ALLOCATION OF INCOME. All
19 income must be apportioned and allocated to this state except income
20 that is apportioned or allocated to another state under RCW 82.56.010.

21 NEW SECTION. **Sec. 8.** COMBINED REPORTING. (1) A taxpayer engaged
22 in a unitary business with one or more other corporations must file a
23 combined report which includes the income, determined under section 9
24 of this act, and apportionment factors, determined under RCW 82.56.010,
25 of all corporations that are members of the unitary business, and such
26 other information as required by the department.

27 (2) The department may, by rule, require the combined report to
28 include the income and associated apportionment factors of any persons
29 that are not included under subsection (1) of this section, but that
30 are members of a unitary business, in order to reflect proper
31 apportionment of income of entire unitary businesses. Authority to
32 require combination by rule under this subsection includes authority to
33 require combination of persons that are not, or would not be if doing
34 business in this state, subject to tax under this chapter.

1 (a) In addition, if the department determines that the reported
2 income or loss of a taxpayer engaged in a unitary business with any
3 person not included under subsection (1) of this section represents an
4 avoidance or evasion of tax by such taxpayer, the department may, on a
5 case-by-case basis, require all or any part of the income and
6 associated apportionment factors of such person to be included in the
7 taxpayer's combined report.

8 (b) With respect to inclusion of associated apportionment factors
9 under this subsection, the department may require the exclusion of any
10 one or more of the factors, the inclusion of one or more additional
11 factors which will fairly represent the taxpayer's business activity in
12 this state, or the employment of any other method to effectuate a
13 proper reflection of the total amount of income subject to
14 apportionment and an equitable allocation and apportionment of the
15 taxpayer's income.

16 NEW SECTION. **Sec. 9.** DETERMINATION OF TAXABLE INCOME OR LOSS
17 USING COMBINED REPORT. The use of a combined report does not disregard
18 the separate identities of the taxpayer members of the combined group.
19 Each taxpayer member is responsible for tax based on its taxable income
20 or loss apportioned or allocated to this state, which includes, in
21 addition to other types of income, the taxpayer member's apportioned
22 share of business income of the combined group, where business income
23 of the combined group is calculated as a summation of the individual
24 net business incomes of all members of the combined group. A member's
25 net business income is determined by removing all but business income,
26 expense, and loss from that member's total income of the combined
27 group, as provided in this section.

28 (1)(a) Each taxpayer member is responsible for tax based on its
29 taxable income or loss apportioned or allocated to this state, which
30 includes:

31 (i) Its share of any business income apportionable to this state of
32 each of the combined groups of which it is a member, determined under
33 subsection (2) of this section;

34 (ii) Its share of any business income apportionable to this state
35 of a distinct business activity conducted within and without the state
36 wholly by the taxpayer member, determined under RCW 82.56.010;

1 (iii) Its income from a business conducted wholly by the taxpayer
2 member entirely within the state;

3 (iv) Its income sourced to this state from the sale or exchange of
4 capital or assets, and from involuntary conversions, as determined
5 under subsection (3)(a)(vii) of this section, below;

6 (v) Its nonbusiness income or loss allocable to this state,
7 determined under RCW 82.56.010;

8 (vi) Its income or loss allocated or apportioned in an earlier
9 year, required to be taken into account as state source income during
10 the income year, other than a net operating loss; and

11 (vii) Its net operating loss carryover or carryback. If the
12 taxable income computed under this section results in a loss for a
13 taxpayer member of the combined group, that taxpayer member has a state
14 net operating loss. Such net operating loss is applied as a deduction
15 in a prior or subsequent year only if that taxpayer has state source
16 positive net income, whether or not the taxpayer is or was a member of
17 a combined reporting group in the prior or subsequent year.

18 (b) Except where otherwise provided, no tax credit or
19 post-apportionment deduction earned by one member of the group, but not
20 fully used by or allowed to that member, may be used in whole or in
21 part by another member of the group or applied in whole or in part
22 against the total income of the combined group; and a
23 post-apportionment deduction carried over into a subsequent year as to
24 the member that incurred it, and available as a deduction to that
25 member in a subsequent year, will be considered in the computation of
26 the income of that member in the subsequent year, regardless of the
27 composition of that income as apportioned, allocated, or wholly within
28 this state.

29 (2) The taxpayer's share of the business income apportionable to
30 this state of each combined group of which it is a member is the
31 product of:

32 (a) The business income of the combined group, determined under
33 subsection (3) of this section; and

34 (b) The taxpayer member's apportionment percentage, determined
35 under RCW 82.56.010, including in the property, payroll, and sales
36 factor numerators the taxpayer's property, payroll, and sales,
37 respectively, associated with the combined group's unitary business in
38 this state, and including in the denominator the property, payroll, and

1 sales of all members of the combined group, including the taxpayer,
2 which property, payroll, and sales are associated with the combined
3 group's unitary business wherever located. The property, payroll, and
4 sales of a partnership must be included in the determination of the
5 partner's apportionment percentage in proportion to a ratio the
6 numerator of which is the amount of the partner's distributive share of
7 partnership's unitary income included in the income of the combined
8 group in accordance with subsection (3)(b)(iii) of this section and the
9 denominator of which is the amount of the partnership's total unitary
10 income.

11 (3) The business income of a combined group is determined as
12 follows:

13 (a) From the total income of the combined group, determined under
14 (b) of this subsection, subtract any income, and add any expense or
15 loss, other than the business income, expense, or loss of the combined
16 group.

17 (b) Except as otherwise provided, the total income of the combined
18 group is the sum of the incomes, separately determined, of each member
19 of the combined group. The income of each member of the combined group
20 must be determined as follows:

21 (i) For any member incorporated in the United States, or included
22 in a consolidated federal corporate income tax return, the income to be
23 included in the total income of the combined group is the taxable
24 income for the corporation after making appropriate adjustments under
25 section 4 of this act.

26 (ii)(A) For any member not included in (a) of this subsection, the
27 income to be included in the total income of the combined group must be
28 determined as follows:

29 (I) A profit and loss statement must be prepared for each foreign
30 branch or corporation in the currency in which the books of account of
31 the branch or corporation are regularly maintained.

32 (II) Adjustments must be made to the profit and loss statement to
33 conform it to the accounting principles generally accepted in the
34 United States for the preparation of such statements except as modified
35 under this title.

36 (III) Adjustments must be made to the profit and loss statement to
37 conform it to the tax accounting standards required by the department
38 by rule.

1 (IV) Except as otherwise provided by rule, the profit and loss
2 statement of each member of the combined group, and the apportionment
3 factors related thereto, whether United States or foreign, must be
4 translated into the currency in which the parent company maintains its
5 books and records.

6 (V) Income apportioned to this state must be expressed in United
7 States dollars.

8 (B) In lieu of the procedures set forth in (b)(ii)(A) of this
9 subsection, and subject to the determination of the department that it
10 reasonably approximates income, any member not included in (b)(i) of
11 this subsection may determine its income on the basis of the
12 consolidated profit and loss statement which includes the member and
13 which is prepared for filing with the securities and exchange
14 commission by related corporations. If the member is not required to
15 file with the securities and exchange commission, the department may
16 allow the use of the consolidated profit and loss statement prepared
17 for reporting to shareholders and subject to review by an independent
18 auditor. If above statements do not reasonably approximate income as
19 determined by the department, the department may accept those
20 statements with appropriate adjustments to approximate that income.

21 (iii) If a unitary business includes income from a partnership, the
22 income to be included in the total income of the combined group must be
23 the member of the combined group's direct and indirect distributive
24 share of the partnership's unitary business income.

25 (iv) All dividends paid by one to another of the members of the
26 combined group must, to the extent those dividends are paid out of the
27 earnings and profits of the unitary business included in the combined
28 report, in the current or an earlier year, be eliminated from the
29 income of the recipient. This provision does not apply to dividends
30 received from members of the unitary business which are not a part of
31 the combined group.

32 (v) Except as otherwise provided by rule, business income from an
33 intercompany transaction between members of the same combined group
34 must be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the
35 occurrence of any of the following events, deferred business income
36 resulting from an intercompany transaction between members of a
37 combined group must be restored to the income of the seller, and is
38 apportioned as business income earned immediately before the event:

1 (A) The object of a deferred intercompany transaction is:

2 (I) Resold by the buyer to an entity that is not a member of the
3 combined group;

4 (II) Resold by the buyer to an entity that is a member of the
5 combined group for use outside the unitary business in which the buyer
6 and seller are engaged; or

7 (III) Converted by the buyer to a use outside the unitary business
8 in which the buyer and seller are engaged; or

9 (B) The buyer and seller are no longer members of the same combined
10 group, regardless of whether the members remain unitary.

11 (vi) A charitable expense incurred by a member of a combined group
12 must, to the extent allowable as a deduction under internal revenue
13 code section 170, be subtracted first from the business income of the
14 combined group (subject to the income limitations of that section
15 applied to the entire business income of the group), and any remaining
16 amount must then be treated as a nonbusiness expense allocable to the
17 member that incurred the expense (subject to the income limitations of
18 that section applied to the nonbusiness income of that specific
19 member). Any charitable deduction disallowed under the foregoing rule,
20 but allowed as a carryover deduction in a subsequent year, must be
21 treated as originally incurred in the subsequent year by the same
22 member, and the rules of this section apply in the subsequent year in
23 determining the allowable deduction in that year.

24 (vii) Gain or loss from the sale or exchange of capital assets,
25 property described by internal revenue code section 1231(a)(3), and
26 property subject to an involuntary conversion, must be removed from the
27 total separate net income of each member of a combined group and must
28 be apportioned and allocated as follows:

29 (A) For each class of gain or loss (short-term capital, long-term
30 capital, internal revenue code section 1231, and involuntary
31 conversions) all members' business gain and loss for the class must be
32 combined (without netting between such classes), and each class of net
33 business gain or loss separately apportioned to each member using the
34 member's apportionment percentage determined under subsection (2) of
35 this section.

36 (B) Each taxpayer member must then net its apportioned business
37 gain or loss for all classes, including any such apportioned business
38 gain and loss from other combined groups, against the taxpayer member's

1 nonbusiness gain and loss for all classes allocated to this state,
2 using the rules of internal revenue code sections 1231 and 1222,
3 without regard to any of the taxpayer member's gains or losses from the
4 sale or exchange of capital assets, internal revenue code section 1231
5 property, and involuntary conversions which are nonbusiness items
6 allocated to another state.

7 (C) Any resulting state source income (or loss, if the loss is not
8 subject to the limitations of internal revenue code section 1211) of a
9 taxpayer member produced by the application of this section must then
10 be applied to all other state source income or loss of that member.

11 (D) Any resulting state source loss of a member that is subject to
12 the limitations of internal revenue code section 1211 must be carried
13 forward by that member, and must be treated as state source short-term
14 capital loss incurred by that member for the year for which the
15 carryover applies.

16 (viii) Any expense of one member of the unitary group which is
17 directly or indirectly attributable to the nonbusiness or exempt income
18 of another member of the unitary group must be allocated to that other
19 member as corresponding nonbusiness or exempt expense, as appropriate.

20 NEW SECTION. **Sec. 10.** DESIGNATION OF SURETY. As a filing
21 convenience, and without changing the respective liability of the group
22 members, members of a combined reporting group may annually elect to
23 designate one taxpayer member of the combined group to file a single
24 return in the form and manner prescribed by the department, in lieu of
25 filing their own respective returns, provided that the taxpayer
26 designated to file the single return consents to act as surety with
27 respect to the tax liability of all other taxpayers properly included
28 in the combined report, and agrees to act as agent on behalf of those
29 taxpayers for the year of the election for tax matters relating to the
30 combined report for that year. If for any reason the surety is
31 unwilling or unable to perform its responsibilities, tax liability may
32 be assessed against the taxpayer members.

33 NEW SECTION. **Sec. 11.** WATER'S-EDGE ELECTION; INITIATION AND
34 WITHDRAWAL. (1) Taxpayer members of a unitary group that meet the
35 requirements of subsection (2) of this section may elect to determine
36 each of their apportioned shares of the net business income or loss of

1 the combined group under a water's-edge election. Under this election,
2 taxpayer members must take into account all or a portion of the income
3 and apportionment factors of only the following members otherwise
4 included in the combined group under section 8 of this act, as follows:

5 (a) The entire income and apportionment factors of any member
6 incorporated in the United States or formed under the laws of any
7 state, the District of Columbia, or any territory or possession of the
8 United States;

9 (b) The entire income and apportionment factors of any member,
10 regardless of the place incorporated or formed, if the average of its
11 property, payroll, and sales factors within the United States is twenty
12 percent or more;

13 (c) The entire income and apportionment factors of any member which
14 is a domestic international sales corporation as described in internal
15 revenue code sections 991 to 994, inclusive; a foreign sales
16 corporation as described in internal revenue code sections 921 to 927,
17 inclusive; or any member which is an export trade corporation, as
18 described in internal revenue code sections 970 to 971, inclusive;

19 (d) Any member not described in (a) through (c) of this subsection,
20 inclusive, must include the portion of its income derived from or
21 attributable to sources within the United States, as determined under
22 the internal revenue code without regard to federal treaties, and its
23 apportionment factors related thereto;

24 (e) Any member that is a "controlled foreign corporation," as
25 defined in internal revenue code section 957, to the extent of the
26 income of that member that is defined in section 952 of subpart F of
27 the internal revenue code ("subpart F income") not excluding lower-tier
28 subsidiaries' distributions of such income which were previously taxed,
29 determined without regard to federal treaties, and the apportionment
30 factors related to that income; any item of income received by a
31 controlled foreign corporation is excluded if such income was subject
32 to an effective rate of income tax imposed by a foreign country greater
33 than ninety percent of the maximum rate of tax specified in internal
34 revenue code section 11;

35 (f) Any member that earns more than twenty percent of its income,
36 directly or indirectly, from intangible property or service related
37 activities that are deductible against the business income of other

1 members of the combined group, to the extent of that income and the
2 apportionment factors related thereto; and

3 (g) The entire income and apportionment factors of any member that
4 is doing business in a tax haven, where "doing business in a tax haven"
5 is defined as being engaged in activity sufficient for that tax haven
6 jurisdiction to impose a tax under United States constitutional
7 standards. If the member's business activity within a tax haven is
8 entirely outside the scope of the laws, provisions, and practices that
9 cause the jurisdiction to meet the criteria established in section
10 1(12) of this act, the activity of the member must be treated as not
11 having been conducted in a tax haven.

12 (2)(a) A water's-edge election is effective only if made on a
13 timely filed, original return for a taxable year by every member of the
14 unitary business subject to tax under this title. The department must
15 develop rules, and rules governing the impact if any, on the scope or
16 application of a water's-edge election, including termination or deemed
17 election, resulting from a change in the composition of the unitary
18 group, the combined group, the taxpayer members, and any other similar
19 change.

20 (b) Such election constitutes consent to the reasonable production
21 of documents and taking of depositions.

22 (c) In the discretion of the department, a water's-edge election
23 may be disregarded in part or in whole, and the income and
24 apportionment factors of any member of the taxpayer's unitary group may
25 be included in the combined report without regard to the provisions of
26 this section, if any member of the unitary group fails to comply with
27 any provision of this title or if a person otherwise not included in
28 the water's-edge combined group was availed of with a substantial
29 objective of avoiding state income tax.

30 (d) A water's-edge election is binding for and applicable to the
31 tax year it is made and all taxable years thereafter. It may be
32 withdrawn or reinstated after withdrawal, only upon written request
33 for reasonable cause based on extraordinary hardship due to unforeseen
34 changes in state tax statutes, law, or policy, and only with the
35 written permission of the department. If the department grants a
36 withdrawal of election, he or she must impose reasonable conditions as
37 necessary to prevent the evasion of tax or to clearly reflect income
38 for the election period prior to or after the withdrawal.

1 NEW SECTION. **Sec. 12.** ESTIMATED TAX IMPOSED--DUE DATE OF
2 ESTIMATED TAXES--AMOUNT OF ESTIMATED TAX--UNDERPAYMENT PENALTY. (1)
3 Each taxpayer who is required by the internal revenue code to make
4 payment of estimated taxes must pay to the department on forms
5 prescribed by the department the estimated taxes due under this title.

6 (2) The provisions of the internal revenue code relating to the
7 determination of reporting periods and due dates of payments of
8 estimated tax apply to the estimated tax payments due under this
9 section.

10 (3) The amount of the estimated tax is the annualized tax divided
11 by the number of months in the reporting period. No estimated tax is
12 due if the annualized tax is less than five hundred dollars. The
13 provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of
14 estimated tax but do not apply to underpayments if the tax remitted to
15 the department under this title is either ninety percent of the tax
16 shown on the return or one hundred percent of the tax shown on the
17 previous year's tax return.

18 (4) For purposes of this section, the annualized tax is the
19 taxpayer's projected tax liability for the taxable year as computed
20 under section 6654 of the internal revenue code and the regulations
21 thereunder.

22 NEW SECTION. **Sec. 13.** METHOD OF ACCOUNTING. (1) A taxpayer's
23 method of accounting for purposes of the tax imposed under this title
24 must be the same as the taxpayer's method of accounting for federal
25 income tax purposes. If no method of accounting has been regularly
26 used by a taxpayer for federal income tax purposes or if the method
27 used does not clearly reflect income, tax due under this title is
28 computed by a method of accounting that in the opinion of the
29 department fairly reflects income.

30 (2) If a corporation's method of accounting is changed for federal
31 income tax purposes, it must be similarly changed for purposes of this
32 title.

33 NEW SECTION. **Sec. 14.** CORPORATIONS REQUIRED TO FILE RETURNS. (1)
34 All taxpayers must file with the department, on forms prescribed by the
35 department, an income tax return for each taxable year. A corporation
36 owing no tax for a taxable year is not required to file a return for

1 that year. Each corporation required to file a return under this title
2 must, without assessment, notice, or demand, pay any tax due thereon to
3 the department on or before the date fixed for the filing of the
4 return.

5 (2) The department may by rule require that certain taxpayers file,
6 on forms prescribed by the department, informational returns for any
7 period.

8 (3) If an adjustment to a taxpayer's federal return is made by the
9 taxpayer or the internal revenue service, the taxpayer must, within
10 ninety days of the final determination of the adjustment by the
11 internal revenue service or within thirty days of the filing of a
12 federal return adjusted by the taxpayer, file with the department on
13 forms prescribed by the department, a corrected return reflecting the
14 adjustments as finally determined. The taxpayer must pay any
15 additional tax due resulting from the finally determined internal
16 revenue service adjustment or a taxpayer adjustment without notice and
17 assessment. The period of limitation for the collection of the
18 additional tax, interest, and penalty due as a result of an adjustment
19 by the taxpayer or a finally determined internal revenue service
20 adjustment must begin at the later of thirty days following the final
21 determination of the adjustment or the date of the filing of the
22 corrected return.

23 NEW SECTION. **Sec. 15.** DUE DATE FOR FILING A RETURN--EXTENSIONS--
24 INTEREST AND PENALTIES. The due date of a return required to be filed
25 with the department is the due date of the federal income tax return or
26 informational return for federal income tax purposes. The department
27 has the authority to grant extensions of times by which returns
28 required to be filed by this title may be submitted. The department
29 also has the authority to grant extensions of time to pay tax with
30 regard to taxes imposed by this title. Interest at the rate as
31 specified in RCW 82.32.050 accrues during any extension period and the
32 interest and penalty provisions of chapter 82.32 RCW apply to late
33 payments and deficiencies. Notwithstanding the limitation of RCW
34 82.32.090, in the case of the late filing of an informational return,
35 there is imposed a penalty the amount of which must be established by
36 the department by rule. The penalty may not exceed fifty dollars per

1 month for a maximum of ten months. RCW 82.32.105 applies to this
2 section.

3 NEW SECTION. **Sec. 16.** RECORDS--RETURNS. (1) Every taxpayer
4 required to deduct and withhold the tax imposed under this title must
5 keep records, render statements, make returns, file reports, and
6 perform other acts as the department requires by rule. Each return is
7 made under penalty of perjury and on forms prescribed by the
8 department. The department may require other statements and reports be
9 made under penalty of perjury and on forms prescribed by the
10 department. The department may require any taxpayer required to deduct
11 and withhold the tax imposed under this title to furnish to the
12 department a correct copy of any return or document that the taxpayer
13 has filed with the internal revenue service or received from the
14 internal revenue service.

15 (2) All books and records and other papers and documents required
16 to be kept under this title are subject to inspection by the department
17 at all times during business hours of the day.

18 NEW SECTION. **Sec. 17.** PROVISIONS OF INTERNAL REVENUE CODE
19 CONTROL. (1) To the extent possible without being inconsistent with
20 this title, all of the provisions of the internal revenue code relating
21 to the following subjects apply to the taxes imposed under this title:

- 22 (a) Liability of transferees;
23 (b) Time and manner of making returns, extensions of time for
24 filing returns, verification of returns, and the time when a return is
25 deemed filed.

26 (2) The department by rule may provide modifications and exceptions
27 to the provisions in subsection (1) of this section, if reasonably
28 necessary to facilitate the prompt, efficient, and equitable collection
29 of tax under this title.

30 NEW SECTION. **Sec. 18.** ADMINISTRATIVE PROVISIONS. Chapter 82.32
31 RCW applies to the taxes imposed in this chapter.

32 NEW SECTION. **Sec. 19.** RULES. The department may adopt rules
33 under chapter 34.05 RCW for the administration and enforcement of this
34 title. The rules, to the extent possible without being inconsistent

1 with this title, must follow the internal revenue code and the
2 regulations and rulings of the United States department of the treasury
3 with respect to the federal income tax. The department may adopt as a
4 part of these rules any portions of the internal revenue code and
5 treasury department regulations and rulings, in whole or in part.

6 NEW SECTION. **Sec. 20.** CRIMES. (1) Any person who knowingly
7 attempts to evade the tax imposed under this title or payment thereof
8 is guilty of a class C felony as provided in chapter 9A.20 RCW.

9 (2) Any person required to collect tax imposed under this title who
10 knowingly fails to collect, truthfully account for, or pay over the tax
11 is guilty of a class C felony as provided in chapter 9A.20 RCW.

12 (3) Any person who knowingly fails to pay tax, pay estimated tax,
13 make returns, keep records, or supply information, as required under
14 this title, is guilty of a gross misdemeanor as provided in chapter
15 9A.20 RCW.

16 NEW SECTION. **Sec. 21.** USE OF TAX RECEIPTS. All receipts from the
17 tax imposed in this chapter must be deposited in equal amounts into the
18 education legacy trust account to be used as follows:

19 (1) Thirty percent for early childhood education and wraparound
20 services;

21 (2) Thirty percent for postsecondary education programs;

22 (3) Thirty percent for K-12 programs; and

23 (4) Ten percent for youth development and mentoring programs.

24 NEW SECTION. **Sec. 22.** CODIFICATION. Sections 1 through 21 of
25 this act constitute a new title, to be codified as Title 82A RCW.

26 NEW SECTION. **Sec. 23.** SEVERABILITY CLAUSE. If any provision of
27 this act or its application to any person or circumstance is held
28 invalid, the remainder of the act or the application of the provision
29 to other persons or circumstances is not affected.

30 NEW SECTION. **Sec. 24.** EFFECTIVE DATE. This act takes effect
31 January 1, 2014.

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