



1       **Sec. 101.** RCW 82.04.29002 and 2010 1st sp.s. c 23 s 1101 are  
2 each amended to read as follows:

3       (1) (~~Beginning May 1, 2010, through June 30, 2013,~~) An  
4 additional rate of tax of 0.30 percent is added to the rate provided  
5 for in RCW 82.04.255, 82.04.285, and 82.04.290(2)(a). Revenue  
6 collected from the additional rate of tax under this subsection (1)  
7 must be deposited in the education legacy trust account created in  
8 RCW 83.100.230.

9       (2)(a) The additional rate in subsection (1) of this section does  
10 not apply to persons engaging within this state in business as a  
11 hospital. "Hospital" has the meaning provided in chapter 70.41 RCW  
12 but also includes any hospital that comes within the scope of chapter  
13 71.12 RCW if the hospital is also licensed under chapter 70.41 RCW.

14       (b) The additional rate in subsection (1) of this section does  
15 not apply to amounts received from performing scientific research and  
16 development services including but not limited to research and  
17 development in the physical, engineering, and life sciences (such as  
18 agriculture, bacteriological, biotechnology, chemical, life sciences,  
19 and physical science research and development laboratories or  
20 services).

21       **Sec. 102.** RCW 82.04.4451 and 2010 1st sp.s. c 23 s 1102 are each  
22 amended to read as follows:

23       (1) In computing the tax imposed under this chapter, a credit is  
24 allowed against the amount of tax otherwise due under this chapter,  
25 as provided in this section. Except for taxpayers that report at  
26 least fifty percent of their taxable amount under RCW 82.04.255,  
27 82.04.290(2)(a), and 82.04.285, the maximum credit for a taxpayer for  
28 a reporting period is thirty-five dollars multiplied by the number of  
29 months in the reporting period, as determined under RCW 82.32.045.  
30 For a taxpayer that reports at least fifty percent of its taxable  
31 amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the  
32 maximum credit for a reporting period is (~~seventy~~) one hundred  
33 fifty dollars multiplied by the number of months in the reporting  
34 period, as determined under RCW 82.32.045.

35       (2) When the amount of tax otherwise due under this chapter is  
36 equal to or less than the maximum credit, a credit is allowed equal  
37 to the amount of tax otherwise due under this chapter.

38       (3) When the amount of tax otherwise due under this chapter  
39 exceeds the maximum credit, a reduced credit is allowed equal to

1 twice the maximum credit, minus the tax otherwise due under this  
2 chapter, but not less than zero.

3 (4) The department may prepare a tax credit table consisting of  
4 tax ranges using increments of no more than five dollars and a  
5 corresponding tax credit to be applied to those tax ranges. The table  
6 shall be prepared in such a manner that no taxpayer will owe a  
7 greater amount of tax by using the table than would be owed by  
8 performing the calculation under subsections (1) through (3) of this  
9 section. A table prepared by the department under this subsection  
10 must be used by all taxpayers in taking the credit provided in this  
11 section.

12 **PART II**

13 **Eliminating the Preferential Business and Occupation Tax Rate for**  
14 **Travel Agents**

15 **Sec. 201.** RCW 82.04.260 and 2014 c 140 s 6 and 2014 c 140 s 4  
16 are each reenacted and amended to read as follows:

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

19 (a) Wheat into flour, barley into pearl barley, soybeans into  
20 soybean oil, canola into canola oil, canola meal, or canola by-  
21 products, or sunflower seeds into sunflower oil; as to such persons  
22 the amount of tax with respect to such business is equal to the value  
23 of the flour, pearl barley, oil, canola meal, or canola by-product  
24 manufactured, multiplied by the rate of 0.138 percent;

25 (b) Beginning July 1, 2015, seafood products that remain in a  
26 raw, raw frozen, or raw salted state at the completion of the  
27 manufacturing by that person; or selling manufactured seafood  
28 products that remain in a raw, raw frozen, or raw salted state at the  
29 completion of the manufacturing, to purchasers who transport in the  
30 ordinary course of business the goods out of this state; as to such  
31 persons the amount of tax with respect to such business is equal to  
32 the value of the products manufactured or the gross proceeds derived  
33 from such sales, multiplied by the rate of 0.138 percent. Sellers  
34 must keep and preserve records for the period required by RCW  
35 82.32.070 establishing that the goods were transported by the  
36 purchaser in the ordinary course of business out of this state;

37 (c)(i) Beginning July 1, 2015, dairy products; or selling dairy  
38 products that the person has manufactured to purchasers who either

1 transport in the ordinary course of business the goods out of state  
2 or purchasers who use such dairy products as an ingredient or  
3 component in the manufacturing of a dairy product; as to such persons  
4 the tax imposed is equal to the value of the products manufactured or  
5 the gross proceeds derived from such sales multiplied by the rate of  
6 0.138 percent. Sellers must keep and preserve records for the period  
7 required by RCW 82.32.070 establishing that the goods were  
8 transported by the purchaser in the ordinary course of business out  
9 of this state or sold to a manufacturer for use as an ingredient or  
10 component in the manufacturing of a dairy product.

11 (ii) For the purposes of this subsection (1)(c), "dairy products"  
12 means:

13 (A) Products, not including any marijuana-infused product, that  
14 as of September 20, 2001, are identified in 21 C.F.R., chapter 1,  
15 parts 131, 133, and 135, including by-products from the manufacturing  
16 of the dairy products, such as whey and casein; and

17 (B) Products comprised of not less than seventy percent dairy  
18 products that qualify under (c)(ii)(A) of this subsection, measured  
19 by weight or volume.

20 (iii) The preferential tax rate provided to taxpayers under this  
21 subsection (1)(c) does not apply to sales of dairy products on or  
22 after July 1, 2023, where a dairy product is used by the purchaser as  
23 an ingredient or component in the manufacturing in Washington of a  
24 dairy product;

25 (d)(i) Beginning July 1, 2015, fruits or vegetables by canning,  
26 preserving, freezing, processing, or dehydrating fresh fruits or  
27 vegetables, or selling at wholesale fruits or vegetables manufactured  
28 by the seller by canning, preserving, freezing, processing, or  
29 dehydrating fresh fruits or vegetables and sold to purchasers who  
30 transport in the ordinary course of business the goods out of this  
31 state; as to such persons the amount of tax with respect to such  
32 business is equal to the value of the products manufactured or the  
33 gross proceeds derived from such sales multiplied by the rate of  
34 0.138 percent. Sellers must keep and preserve records for the period  
35 required by RCW 82.32.070 establishing that the goods were  
36 transported by the purchaser in the ordinary course of business out  
37 of this state.

38 (ii) For purposes of this subsection (1)(d), "fruits" and  
39 "vegetables" do not include marijuana, useable marijuana, or  
40 marijuana-infused products;

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

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

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

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

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

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

29 ~~(6))~~ Upon every person engaging within this state in business as  
30 an international steamship agent, international customs house broker,  
31 international freight forwarder, vessel and/or cargo charter broker  
32 in foreign commerce, and/or international air cargo agent; as to such  
33 persons the amount of the tax with respect to only international  
34 activities is equal to the gross income derived from such activities  
35 multiplied by the rate of 0.275 percent.

36 ~~((7))~~ (6) Upon every person engaging within this state in the  
37 business of stevedoring and associated activities pertinent to the  
38 movement of goods and commodities in waterborne interstate or foreign  
39 commerce; as to such persons the amount of tax with respect to such  
40 business is equal to the gross proceeds derived from such activities

1 multiplied by the rate of 0.275 percent. Persons subject to taxation  
2 under this subsection are exempt from payment of taxes imposed by  
3 chapter 82.16 RCW for that portion of their business subject to  
4 taxation under this subsection. Stevedoring and associated activities  
5 pertinent to the conduct of goods and commodities in waterborne  
6 interstate or foreign commerce are defined as all activities of a  
7 labor, service or transportation nature whereby cargo may be loaded  
8 or unloaded to or from vessels or barges, passing over, onto or under  
9 a wharf, pier, or similar structure; cargo may be moved to a  
10 warehouse or similar holding or storage yard or area to await further  
11 movement in import or export or may move to a consolidation freight  
12 station and be stuffed, unstuffed, containerized, separated or  
13 otherwise segregated or aggregated for delivery or loaded on any mode  
14 of transportation for delivery to its consignee. Specific activities  
15 included in this definition are: Wharfage, handling, loading,  
16 unloading, moving of cargo to a convenient place of delivery to the  
17 consignee or a convenient place for further movement to export mode;  
18 documentation services in connection with the receipt, delivery,  
19 checking, care, custody and control of cargo required in the transfer  
20 of cargo; imported automobile handling prior to delivery to  
21 consignee; terminal stevedoring and incidental vessel services,  
22 including but not limited to plugging and unplugging refrigerator  
23 service to containers, trailers, and other refrigerated cargo  
24 receptacles, and securing ship hatch covers.

25 ~~((+8))~~ (7)(a) Upon every person engaging within this state in  
26 the business of disposing of low-level waste, as defined in RCW  
27 43.145.010; as to such persons the amount of the tax with respect to  
28 such business is equal to the gross income of the business, excluding  
29 any fees imposed under chapter 43.200 RCW, multiplied by the rate of  
30 3.3 percent.

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

35 ~~((+9))~~ (8) Upon every person engaging within this state as an  
36 insurance producer or title insurance agent licensed under chapter  
37 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW;  
38 as to such persons, the amount of the tax with respect to such  
39 licensed activities is equal to the gross income of such business  
40 multiplied by the rate of 0.484 percent.

1       (~~(10)~~) (9) Upon every person engaging within this state in  
2 business as a hospital, as defined in chapter 70.41 RCW, that is  
3 operated as a nonprofit corporation or by the state or any of its  
4 political subdivisions, as to such persons, the amount of tax with  
5 respect to such activities is equal to the gross income of the  
6 business multiplied by the rate of 0.75 percent through June 30,  
7 1995, and 1.5 percent thereafter.

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

18       (i) 0.4235 percent from October 1, 2005, through June 30, 2007;  
19 and

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

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

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

36       (d) In addition to all other requirements under this title, a  
37 person reporting under the tax rate provided in this subsection  
38 (~~(11)~~) (10) must file a complete annual report with the department  
39 under RCW 82.32.534.

1 (e)(i) Except as provided in (e)(ii) of this subsection (~~((11))~~)  
2 (10), this subsection (~~((11))~~) (10) does not apply on and after July  
3 1, 2040.

4 (ii) With respect to the manufacturing of commercial airplanes or  
5 making sales, at retail or wholesale, of commercial airplanes, this  
6 subsection (~~((11))~~) (10) does not apply on and after July 1st of the  
7 year in which the department makes a determination that any final  
8 assembly or wing assembly of any version or variant of a commercial  
9 airplane that is the basis of a siting of a significant commercial  
10 airplane manufacturing program in the state under RCW 82.32.850 has  
11 been sited outside the state of Washington. This subsection (~~((11))~~)  
12 (10)(e)(ii) only applies to the manufacturing or sale of commercial  
13 airplanes that are the basis of a siting of a significant commercial  
14 airplane manufacturing program in the state under RCW 82.32.850.

15 (~~((12))~~) (11)(a) Until July 1, 2024, upon every person engaging  
16 within this state in the business of extracting timber or extracting  
17 for hire timber; as to such persons the amount of tax with respect to  
18 the business is, in the case of extractors, equal to the value of  
19 products, including by-products, extracted, or in the case of  
20 extractors for hire, equal to the gross income of the business,  
21 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
22 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
23 2024.

24 (b) Until July 1, 2024, upon every person engaging within this  
25 state in the business of manufacturing or processing for hire: (i)  
26 Timber into timber products or wood products; or (ii) timber products  
27 into other timber products or wood products; as to such persons the  
28 amount of the tax with respect to the business is, in the case of  
29 manufacturers, equal to the value of products, including by-products,  
30 manufactured, or in the case of processors for hire, equal to the  
31 gross income of the business, multiplied by the rate of 0.4235  
32 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent  
33 from July 1, 2007, through June 30, 2024.

34 (c) Until July 1, 2024, upon every person engaging within this  
35 state in the business of selling at wholesale: (i) Timber extracted  
36 by that person; (ii) timber products manufactured by that person from  
37 timber or other timber products; or (iii) wood products manufactured  
38 by that person from timber or timber products; as to such persons the  
39 amount of the tax with respect to the business is equal to the gross  
40 proceeds of sales of the timber, timber products, or wood products



1 multiplied by the rate of 0.4235 percent from July 1, 2006, through  
2 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,  
3 2024.

4 (d) Until July 1, 2024, upon every person engaging within this  
5 state in the business of selling standing timber; as to such persons  
6 the amount of the tax with respect to the business is equal to the  
7 gross income of the business multiplied by the rate of 0.2904  
8 percent. For purposes of this subsection (~~((12))~~) (11)(d), "selling  
9 standing timber" means the sale of timber apart from the land, where  
10 the buyer is required to sever the timber within thirty months from  
11 the date of the original contract, regardless of the method of  
12 payment for the timber and whether title to the timber transfers  
13 before, upon, or after severance.

14 (e) For purposes of this subsection, the following definitions  
15 apply:

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

20 (ii) "Paper and paper products" means products made of interwoven  
21 cellulosic fibers held together largely by hydrogen bonding. "Paper  
22 and paper products" includes newsprint; office, printing, fine, and  
23 pressure-sensitive papers; paper napkins, towels, and toilet tissue;  
24 kraft bag, construction, and other kraft industrial papers;  
25 paperboard, liquid packaging containers, containerboard, corrugated,  
26 and solid-fiber containers including linerboard and corrugated  
27 medium; and related types of cellulosic products containing  
28 primarily, by weight or volume, cellulosic materials. "Paper and  
29 paper products" does not include books, newspapers, magazines,  
30 periodicals, and other printed publications, advertising materials,  
31 calendars, and similar types of printed materials.

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

38 (iv) "Timber" means forest trees, standing or down, on privately  
39 or publicly owned land. "Timber" does not include Christmas trees

1 that are cultivated by agricultural methods or short-rotation  
2 hardwoods as defined in RCW 84.33.035.

3 (v) "Timber products" means:

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

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

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

11 (vi) "Wood products" means paper and paper products; dimensional  
12 lumber; engineered wood products such as particleboard, oriented  
13 strand board, medium density fiberboard, and plywood; wood doors;  
14 wood windows; and biocomposite surface products.

15 (f) Except for small harvesters as defined in RCW 84.33.035, a  
16 person reporting under the tax rate provided in this subsection  
17 (~~((12))~~) (11) must file a complete annual survey with the department  
18 under RCW 82.32.585.

19 (~~((13))~~) (12) Upon every person engaging within this state in  
20 inspecting, testing, labeling, and storing canned salmon owned by  
21 another person, as to such persons, the amount of tax with respect to  
22 such activities is equal to the gross income derived from such  
23 activities multiplied by the rate of 0.484 percent.

24 (~~((14))~~) (13)(a) Upon every person engaging within this state in  
25 the business of printing a newspaper, publishing a newspaper, or  
26 both, the amount of tax on such business is equal to the gross income  
27 of the business multiplied by the rate of 0.2904 percent.

28 (b) A person reporting under the tax rate provided in this  
29 subsection (~~((14))~~) (13) must file a complete annual report with the  
30 department under RCW 82.32.534.

### 31 PART III

#### 32 **Eliminating the Sales and Use Tax Exemption for Bottled Water**

33 **Sec. 301.** RCW 82.08.0293 and 2014 c 140 s 22 are each amended to  
34 read as follows:

35 (1) The tax levied by RCW 82.08.020 does not apply to sales of  
36 food and food ingredients. "Food and food ingredients" means  
37 substances, whether in liquid, concentrated, solid, frozen, dried, or  
38 dehydrated form, that are sold for ingestion or chewing by humans and

1 are consumed for their taste or nutritional value. "Food and food  
2 ingredients" does not include:

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

6 (b) "Tobacco," which means cigarettes, cigars, chewing or pipe  
7 tobacco, or any other item that contains tobacco; and

8 (c) Marijuana, useable marijuana, or marijuana-infused products.

9 (2) The exemption of "food and food ingredients" provided for in  
10 subsection (1) of this section does not apply to prepared food, soft  
11 drinks, bottled water, or dietary supplements. (~~For purposes of this~~  
12 ~~subsection, the following definitions apply:~~) The definitions in  
13 this subsection apply throughout this section unless the context  
14 clearly requires otherwise.

15 (a) "Bottled water" means water that is placed in a safety sealed  
16 container or package for human consumption. Bottled water is calorie  
17 free and does not contain sweeteners or other additives except that  
18 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)  
19 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;  
20 (vi) preservatives; and (vii) only those flavors, extracts, or  
21 essences derived from a spice or fruit. "Bottled water" includes  
22 water that is delivered to the buyer in a reusable container that is  
23 not sold with the water.

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

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

27 (A) A vitamin;

28 (B) A mineral;

29 (C) An herb or other botanical;

30 (D) An amino acid;

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

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

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

39 (iii) Is required to be labeled as a dietary supplement,  
40 identifiable by the "supplement facts" box found on the label as

1 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered  
2 as of January 1, 2003.

3 ~~((b))~~ (c)(i) "Prepared food" means:

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

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

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

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

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

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

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

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

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

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

37 (3) Notwithstanding anything in this section to the contrary, the  
38 exemption of "food and food ingredients" provided in this section  
39 applies to food and food ingredients that are furnished, prepared, or  
40 served as meals:

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

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

7 (c) That are provided to residents, sixty-two years of age or  
8 older, of a qualified low-income senior housing facility by the  
9 lessor or operator of the facility. The sale of a meal that is billed  
10 to both spouses of a marital community or both domestic partners of a  
11 domestic partnership meets the age requirement in this subsection  
12 (3)(c) if at least one of the spouses or domestic partners is at  
13 least sixty-two years of age. For purposes of this subsection,  
14 "qualified low-income senior housing facility" means a facility:

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

18 (ii) That has been partially funded under 42 U.S.C. Sec. 1485;  
19 and

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

23 (4)(a) Subsection (1) of this section notwithstanding, the retail  
24 sale of food and food ingredients is subject to sales tax under RCW  
25 82.08.020 if the food and food ingredients are sold through a vending  
26 machine. Except as provided in (b) of this subsection, the selling  
27 price of food and food ingredients sold through a vending machine for  
28 purposes of RCW 82.08.020 is fifty-seven percent of the gross  
29 receipts.

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

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

38 **Sec. 302.** RCW 82.12.0293 and 2011 c 2 s 303 are each amended to  
39 read as follows:

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

4 (2) The exemption of "food and food ingredients" provided for in  
5 subsection (1) of this section does not apply to prepared food, soft  
6 drinks, bottled water, or dietary supplements. "Prepared food," "soft  
7 drinks," "bottled water," and "dietary supplements" have the same  
8 meanings as in RCW 82.08.0293.

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

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

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

19 (c) That are provided to residents, sixty-two years of age or  
20 older, of a qualified low-income senior housing facility by the  
21 lessor or operator of the facility. The sale of a meal that is billed  
22 to both spouses of a marital community or both domestic partners of a  
23 domestic partnership meets the age requirement in this subsection  
24 (3)(c) if at least one of the spouses or domestic partners is at  
25 least sixty-two years of age. For purposes of this subsection,  
26 "qualified low-income senior housing facility" has the same meaning  
27 as in RCW 82.08.0293.

28 NEW SECTION. **Sec. 303.** A new section is added to chapter 82.08  
29 RCW to read as follows:

30 (1) Subject to the conditions in this section, the tax levied by  
31 RCW 82.08.020 does not apply to sales of bottled water dispensed or  
32 to be dispensed to patients, pursuant to a prescription for use in  
33 the cure, mitigation, treatment, or prevention of disease or other  
34 medical condition.

35 (2) For purposes of this section, "prescription" means an order,  
36 formula, or recipe issued in any form of oral, written, electronic,  
37 or other means of transmission by a duly licensed practitioner  
38 authorized by the laws of this state to prescribe.

1 (3) Except for sales of bottled water delivered to the buyer in a  
2 reusable container that is not sold with the water, sellers must  
3 collect tax on sales subject to this exemption. Any buyer that has  
4 paid at least twenty-five dollars in state and local sales taxes on  
5 purchases of bottled water subject to this exemption may apply for a  
6 refund of the taxes directly from the department in a form and manner  
7 prescribed by the department. The department must deny any refund  
8 application if the amount of the refund requested is less than  
9 twenty- five dollars. No refund may be made for taxes paid more than  
10 four years after the end of the calendar year in which the tax was  
11 paid to the seller.

12 (4) The provisions of RCW 82.32.060 apply to refunds authorized  
13 under this section.

14 (5) With respect to sales of bottled water delivered to the buyer  
15 in a reusable container that is not sold with the water, buyers  
16 claiming the exemption provided in this section must provide the  
17 seller with an exemption certificate in a form and manner prescribed  
18 by the department. The seller must retain a copy of the certificate  
19 for the seller's files.

20 NEW SECTION. **Sec. 304.** A new section is added to chapter 82.12  
21 RCW to read as follows:

22 (1) The provisions of this chapter do not apply in respect to the  
23 use of bottled water dispensed or to be dispensed to patients,  
24 pursuant to a prescription for use in the cure, mitigation,  
25 treatment, or prevention of disease or medical condition.

26 (2) For the purposes of this section, "prescription" has the same  
27 meaning as provided in section 303 of this act.

28 NEW SECTION. **Sec. 305.** A new section is added to chapter 82.08  
29 RCW to read as follows:

30 (1)(a) Subject to the conditions in this section, the tax levied  
31 by RCW 82.08.020 does not apply to sales of bottled water to persons  
32 whose primary source of drinking water is unsafe.

33 (b) For purposes of this subsection and section 306 of this act,  
34 a person's primary source of drinking water is unsafe if:

35 (i) The public water system providing the drinking water has  
36 issued a public notification that the drinking water may pose a  
37 health risk, and the notification is still in effect on the date that  
38 the bottled water was purchased;

1 (ii) Test results on the person's drinking water, which are no  
2 more than twelve months old, from a laboratory certified to perform  
3 drinking water testing show that the person's drinking water does not  
4 meet safe drinking water standards applicable to public water  
5 systems; or

6 (iii) The person otherwise establishes, to the department's  
7 satisfaction, that the person's drinking water does not meet safe  
8 drinking water standards applicable to public water systems.

9 (2) Except for sales of bottled water delivered to the buyer in a  
10 reusable container that is not sold with the water, sellers must  
11 collect tax on sales subject to this exemption. Any buyer that has  
12 paid at least twenty-five dollars in state and local sales taxes on  
13 purchases of bottled water subject to this exemption may apply for a  
14 refund of the taxes directly from the department in a form and manner  
15 prescribed by the department. The department must deny any refund  
16 application if the amount of the refund requested is less than  
17 twenty-five dollars. No refund may be made for taxes paid more than  
18 four years after the end of the calendar year in which the tax was  
19 paid to the seller.

20 (3) The provisions of RCW 82.32.060 apply to refunds authorized  
21 under this section.

22 (4)(a) With respect to sales of bottled water delivered to the  
23 buyer in a reusable container that is not sold with the water, buyers  
24 claiming the exemption provided in this section must provide the  
25 seller with an exemption certificate in a form and manner prescribed  
26 by the department. The seller must retain a copy of the certificate  
27 for the seller's files.

28 (b) The department may waive the requirement for an exemption  
29 certificate in the event of disaster or similar circumstance.

30 NEW SECTION. **Sec. 306.** A new section is added to chapter 82.12  
31 RCW to read as follows:

32 The provisions of this chapter do not apply in respect to the use  
33 of bottled water by persons whose primary source of drinking water is  
34 unsafe as provided in section 305 of this act.

35 **PART IV**

36 **Repealing the Nonresident Sales and Use Tax Exemption**



1       **Sec. 401.** RCW 82.08.0273 and 2014 c 140 s 17 are each amended to  
2 read as follows:

3       (1) Subject to the conditions and limitations in this section,  
4 the tax levied by RCW 82.08.020 ((does not apply to)) in the form of  
5 a remittance from the department is provided for sales to  
6 nonresidents of this state of tangible personal property, digital  
7 goods, and digital codes(~~(, when))~~). The exemption only applies if:

8       (a) The property is for use outside this state;

9       (b) The purchaser is a bona fide resident of a province or  
10 territory of Canada or a state, territory, or possession of the  
11 United States, other than the state of Washington; and

12       (i) Such state, possession, territory, or province does not  
13 impose, or have imposed on its behalf, a generally applicable retail  
14 sales tax, use tax, value added tax, gross receipts tax on retailing  
15 activities, or similar generally applicable tax, of three percent or  
16 more; or

17       (ii) If imposing a tax described in (b)(i) of this subsection,  
18 provides an exemption for sales to Washington residents by reason of  
19 their residence; and

20       (c) The purchaser agrees, when requested, to grant the department  
21 of revenue access to such records and other forms of verification at  
22 (~~his or her~~) the purchaser's place of residence to assure that such  
23 purchases are not first used substantially in the state of  
24 Washington.

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

1 ~~((requirements))~~ provisions in subsections (1) and (3) through  
2 ~~((+6))~~ (7) of this section apply to this subsection.

3 (3)(a) Any person claiming exemption from retail sales tax under  
4 the provisions of this section must ~~((display proof of his or her~~  
5 ~~current nonresident status as provided in this section))~~ pay the  
6 state and local sales tax to the seller at the time of purchase and  
7 then request a remittance from the department in accordance with this  
8 subsection and subsection (4) of this section. A request for  
9 remittance must include proof of the person's status as a nonresident  
10 at the time of the purchase for which a remittance is requested. The  
11 request for a remittance must also include any additional information  
12 and documentation as required by the department, which may include a  
13 description of the item purchased for which a remittance is  
14 requested, the sales price of the item, the amount of state sales tax  
15 paid on the item, the date of the purchase, the name of the seller  
16 and the physical address where the sale took place, and copies of  
17 sales receipts showing the qualified purchases.

18 (b) Acceptable proof of a nonresident person's status includes  
19 one piece of identification such as a valid driver's license from the  
20 jurisdiction in which the out-of-state residency is claimed or a  
21 valid identification card which has a photograph of the holder and is  
22 issued by the out-of-state jurisdiction. Identification under this  
23 subsection (3)(b) must show the holder's residential address and have  
24 as one of its legal purposes the establishment of residency in that  
25 out-of-state jurisdiction.

26 (c) In lieu of furnishing proof of a person's nonresident status  
27 under (b) of this subsection (3), a person claiming exemption from  
28 retail sales tax under the provisions of this section may provide the  
29 seller with an exemption certificate in compliance with subsection  
30 (4)(b) of this section.

31 ~~((Nothing in this section requires the vendor to make tax~~  
32 ~~exempt retail sales to nonresidents. A vendor may choose to make~~  
33 ~~sales to nonresidents, collect the sales tax, and remit the amount of~~  
34 ~~sales tax collected to the state as otherwise provided by law. If the~~  
35 ~~vendor chooses to make a sale to a nonresident without collecting the~~  
36 ~~sales tax, the vendor must examine the purchaser's proof of~~  
37 ~~nonresidence, determine whether the proof is acceptable under~~  
38 ~~subsection (3)(b) of this section, and maintain records for each~~  
39 ~~nontaxable sale which must show the type of proof accepted, including~~

1 ~~any identification numbers where appropriate, and the expiration~~  
2 ~~date, if any.~~

3 ~~(b) In lieu of using the method provided in (a) of this~~  
4 ~~subsection to document an exempt sale to a nonresident, a seller may~~  
5 ~~accept from the purchaser a properly completed uniform exemption~~  
6 ~~certificate approved by the streamlined sales and use tax agreement~~  
7 ~~governing board or any other exemption certificate as may be~~  
8 ~~authorized by the department and properly completed by the purchaser.~~  
9 ~~A nonresident purchaser who uses an exemption certificate authorized~~  
10 ~~in this subsection (4)(b) must include the purchaser's driver's~~  
11 ~~license number or other state issued identification number and the~~  
12 ~~state of issuance.~~

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

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

21 ~~(b) Any person making tax exempt purchases under this section by~~  
22 ~~displaying proof of identification not his or her own, or counterfeit~~  
23 ~~identification, with intent to violate the provisions of this~~  
24 ~~section, is guilty of a misdemeanor and, in addition, is liable for~~  
25 ~~the tax and subject to a penalty equal to the greater of one hundred~~  
26 ~~dollars or the tax due on such purchases.~~

27 ~~(6)(a) Any vendor who makes sales without collecting the tax and~~  
28 ~~who fails to maintain records of sales to nonresidents as provided in~~  
29 ~~this section is personally liable for the amount of tax due.~~

30 ~~(b) Any vendor who makes sales without collecting the retail~~  
31 ~~sales tax under this section and who has actual knowledge that the~~  
32 ~~purchaser's proof of identification establishing out-of-state~~  
33 ~~residency is fraudulent is guilty of a misdemeanor and, in addition,~~  
34 ~~is liable for the tax and subject to a penalty equal to the greater~~  
35 ~~of one thousand dollars or the tax due on such sales. In addition,~~  
36 ~~both the purchaser and the vendor are liable for any penalties and~~  
37 ~~interest assessable under chapter 82.32 RCW)) (i) Beginning January~~  
38 ~~1, 2016, through December 31, 2016, a person may request a remittance~~  
39 ~~from the department for state sales taxes paid by the person on~~

1 qualified retail purchases made in Washington between July 1, 2015,  
2 and December 31, 2015.

3 (ii) Beginning January 1, 2017, a person may request a remittance  
4 from the department during any calendar year for state sales taxes  
5 paid by the person on qualified retail purchases made in Washington  
6 during the immediately preceding calendar year only. No application  
7 may be made with respect to purchases made before the immediately  
8 preceding calendar year.

9 (b) The remittance request, including proof of nonresident status  
10 and any other documentation and information required by the  
11 department, must be made using an electronic application process as  
12 prescribed by the department. Only one remittance request may be made  
13 by a person per calendar year.

14 (c) The total amount of a remittance request must be at least  
15 twenty-five dollars. The department must deny any request for a  
16 remittance that is less than twenty-five dollars.

17 (d) The department will examine the applicant's proof of  
18 nonresident status and any other documentation and information as  
19 required in the application to determine whether the applicant is  
20 entitled to a remittance under this section.

21 (5)(a) Any person making fraudulent statements to the department,  
22 which includes the offer of fraudulent or fraudulently procured  
23 identification or fraudulent sales receipts, in order to receive a  
24 remittance of retail sales tax is guilty of perjury under chapter  
25 9A.72 RCW.

26 (b) Any person requesting a remittance of sales tax from the  
27 department by providing proof of identification or sales receipts not  
28 the person's own, or counterfeit identification or sales receipts,  
29 with intent to violate the provisions of this section, is guilty of a  
30 misdemeanor and, in addition, is liable for the tax and subject to a  
31 penalty equal to the greater of one hundred dollars or the tax due on  
32 such purchases.

33 (6) The exemption provided by this section is for state sales  
34 taxes.

35 (7) A nonresident who receives a refund of sales tax from the  
36 seller for any reason with respect to a purchase made in this state  
37 is not entitled to a remittance for the tax paid on the purchase. A  
38 person who receives both a remittance under this section and a refund  
39 from the seller with respect to the same purchase must immediately  
40 repay the remittance to the department. Interest as provided in

1 chapter 82.32 RCW applies to amounts due under this section from the  
2 date that the department made the remittance until the amount due  
3 under this subsection is paid to the department. A person who  
4 receives a remittance with respect to a purchase for which the person  
5 had, at the time the person submitted the application for a  
6 remittance, already received a refund of sales tax from the seller is  
7 also liable for the evasion penalty in RCW 82.32.090(7) and is  
8 ineligible to receive any further remittances from the department  
9 under this section.

10 ((+7)) (8) The exemption in this section does not apply to sales  
11 of marijuana, useable marijuana, or marijuana-infused products.

## 12 PART V

### 13 Capital Gains Tax

14 NEW SECTION. **Sec. 501.** The definitions in this section apply  
15 throughout this chapter unless the context clearly requires  
16 otherwise.

17 (1) "Adjusted capital gain" means federal net long-term capital  
18 gain:

19 (a) Plus any loss from a sale or exchange that is exempt from the  
20 tax imposed in this chapter, to the extent such loss was included in  
21 calculating federal net long-term capital gain; and

22 (b) Less any gain from a sale or exchange that is exempt from the  
23 tax imposed in this chapter, to the extent such gain was included in  
24 calculating federal net long-term capital gain.

25 (2) "Capital asset" has the same meaning as provided by section  
26 1221 of the internal revenue code and also includes any other  
27 property if the sale or exchange of the property results in a gain  
28 that is treated as a long-term capital gain under section 1231 or any  
29 other provision of the internal revenue code.

30 (3) "Department" means the department of revenue.

31 (4) "Federal net long-term capital gain" means the net long-term  
32 capital gain reportable for federal income tax purposes.

33 (5) "Individual" means a natural person.

34 (6) "Internal revenue code" means the United States internal  
35 revenue code of 1986 as amended as of the effective date of this  
36 section, or such subsequent date as the department may provide by  
37 rule consistent with the purpose of this chapter.

1 (7) "Long-term capital asset" means a capital asset that is held  
2 for more than one year.

3 (8)(a) "Resident" means an individual:

4 (i) Who is domiciled in this state during the taxable year,  
5 unless the individual (A) maintained no permanent place of abode in  
6 this state during the entire taxable year, (B) maintained a permanent  
7 place of abode outside of this state during the entire taxable year,  
8 and spent in the aggregate not more than thirty days of the taxable  
9 year in this state; or

10 (ii) Who is not domiciled in this state during the taxable year  
11 but maintained a place of abode and was physically present in this  
12 state for more than one hundred eighty-three days during the taxable  
13 year.

14 (b) For purposes of this subsection, "day" includes any portion  
15 of a day, except that a continuous period of twenty-four hours or  
16 less may not constitute more than one day.

17 (c) An individual who is a resident under (a) of this subsection  
18 is a resident for that portion of a taxable year in which the  
19 individual was domiciled in this state or maintained a place of abode  
20 in this state.

21 (9) "Taxable year" means the taxpayer's taxable year as  
22 determined under the internal revenue code.

23 (10) "Taxpayer" means an individual subject to tax under this  
24 chapter.

25 (11) "Washington capital gains" means an individual's adjusted  
26 capital gains allocated to this state as provided in section 506 of  
27 this act, less:

28 (a) Twenty-five thousand dollars; or

29 (b) Fifty thousand dollars for individuals filing joint returns  
30 under this chapter.

31 NEW SECTION. **Sec. 502.** (1) Beginning January 1, 2016, a tax is  
32 imposed on all individuals for the privilege of selling or exchanging  
33 long-term capital assets, or of receiving Washington capital gains.  
34 The tax equals five percent multiplied by the individual's Washington  
35 capital gains.

36 (2) If an individual's Washington capital gains are less than  
37 zero for a taxable year, no tax is due under this section. No such  
38 losses may be carried back or carried forward to another taxable  
39 year.

1 (3)(a) The tax imposed in this section applies to the sale or  
2 exchange of long-term capital assets owned by the taxpayer, whether  
3 the taxpayer was the legal or a beneficial owner at the time of the  
4 sale or exchange.

5 (b) For purposes of this chapter, an individual is a beneficial  
6 owner of long-term capital assets held by an entity that is a pass-  
7 through or disregarded entity for federal tax purposes, such as a  
8 partnership, limited liability company, S-corporation, or trust, to  
9 the extent of the individual's ownership interest in the entity as  
10 reported for federal income tax purposes.

11 NEW SECTION. **Sec. 503.** This chapter does not apply to the sale  
12 or exchange of:

13 (1)(a) A principal residence if the gain is excluded from tax  
14 under section 121 of the internal revenue code; or

15 (b) A principal residence by state registered domestic partners  
16 or spouses of the same sex, if the gain would be otherwise excluded  
17 from tax under section 121 of the internal revenue code;

18 (2) Assets held under a retirement savings account under section  
19 401(k) of the internal revenue code, a tax-sheltered annuity or a  
20 custodial account described in section 403(b) of the internal revenue  
21 code, a deferred compensation plan under section 457(b) of the  
22 internal revenue code, an individual retirement account or an  
23 individual retirement annuity described in section 408 of the  
24 internal revenue code, a Roth individual retirement account described  
25 in section 408A of the internal revenue code, an employee defined  
26 contribution program, an employee defined benefit plan, or similar  
27 retirement savings vehicle;

28 (3) Assets pursuant to or under imminent threat of condemnation  
29 proceedings by the United States, the state or any of its political  
30 subdivisions, or a municipal corporation;

31 (4) Cattle, horses, or breeding livestock held for more than  
32 twelve months if for the taxable year of the sale or exchange, more  
33 than fifty percent of the taxpayer's gross income for the taxable  
34 year, including from the sale or exchange of capital assets, is from  
35 farming or ranching;

36 (5) Agricultural land by an individual who has regular,  
37 continuous, and substantial involvement in the operation of the  
38 agricultural land that meets the criteria for material participation  
39 in an activity under section 469(h) of the internal revenue code for

1 the ten years prior to the date of the sale or exchange of the  
2 agricultural land;

3 (6) Property used in the trade or business of the taxpayer if the  
4 property qualifies for an income tax deduction under sections 167 or  
5 179 of the internal revenue code; and

6 (7) Timber for which the taxpayer makes an election under section  
7 631 (a) or (b) of the internal revenue code to treat the cutting of  
8 such timber as a sale or exchange.

9 NEW SECTION. **Sec. 504.** The tax imposed under this chapter is in  
10 addition to any other taxes imposed by the state or any of its  
11 political subdivisions, or a municipal corporation, with respect to  
12 the same sale or exchange, including the taxes imposed in or under  
13 the authority of chapters 82.04, 82.08, 82.12, 82.14, 82.45, or 82.46  
14 RCW.

15 NEW SECTION. **Sec. 505.** In computing tax there may be deducted  
16 from the measure of tax amounts that the state is prohibited from  
17 taxing under the Constitution of this state or the Constitution or  
18 laws of the United States.

19 NEW SECTION. **Sec. 506.** (1) For purposes of the tax imposed  
20 under this chapter, adjusted capital gains are allocated as follows:

21 (a) Adjusted capital gains from the sale or exchange of real  
22 property are allocated to this state if the real property is located  
23 in this state or a majority of the fair market value of the real  
24 property is located in this state.

25 (b) Adjusted capital gains from the sale or exchange of tangible  
26 personal property are allocated to this state if the property was  
27 located in this state at the time of the sale or exchange. Adjusted  
28 capital gains from the sale or exchange of tangible personal property  
29 are also allocated to this state even though the property was not  
30 located in this state at the time of the sale or exchange if:

31 (i) The property was located in the state at any time during the  
32 taxable year in which the sale or exchange occurred or the  
33 immediately preceding taxable year;

34 (ii) The taxpayer was a resident at the time the sale or exchange  
35 occurred; and



1 (iii) The taxpayer is not subject to the payment of an income or  
2 excise tax legally imposed on the adjusted capital gain by another  
3 taxing jurisdiction.

4 (c) Adjusted capital gains from the sale or exchange of  
5 intangible personal property are allocated to this state if the  
6 taxpayer was domiciled in this state at the time the sale or exchange  
7 occurred.

8 (2)(a) A credit is allowed against the tax imposed in section 502  
9 of this act equal to the amount of any legally imposed income or  
10 excise tax paid by the taxpayer to another taxing jurisdiction on  
11 capital gains derived from capital assets within the other taxing  
12 jurisdiction to the extent such capital gains are included in the  
13 taxpayer's Washington capital gains. The amount of credit under this  
14 subsection may not exceed the total amount of tax due under this  
15 chapter, and there is no carryback or carryforward of any unused  
16 credits.

17 (b) As used in this section, "taxing jurisdiction" means a state  
18 of the United States other than the state of Washington, the District  
19 of Columbia, the Commonwealth of Puerto Rico, any territory or  
20 possession of the United States, or any foreign country or political  
21 subdivision of a foreign country.

22 NEW SECTION. **Sec. 507.** (1) Except as otherwise provided in this  
23 section or RCW 82.32.080, taxpayers owing tax under this chapter must  
24 file, on forms prescribed by the department, a return with the  
25 department on or before the date the taxpayer's federal income tax  
26 return for the taxable year is required to be filed.

27 (2) Each taxpayer required to file a return under this section  
28 must, without assessment, notice, or demand, pay any tax due thereon  
29 to the department on or before the date fixed for the filing of the  
30 return, not including any filing extension. If any tax due under this  
31 chapter is not paid by the due date, interest and penalties as  
32 provided in chapter 82.32 RCW apply to the deficiency.

33 (3) The department may by rule require that certain individuals  
34 and other persons file, at times and on forms prescribed by the  
35 department, informational returns for any period.

36 (4) If a taxpayer has obtained an extension of time for filing  
37 the federal income tax return for the taxable year, the taxpayer is  
38 entitled to the same extension of time for filing the return required  
39 under this section if the taxpayer provides the department, before

1 the due date provided in subsection (1) of this section, the  
2 extension confirmation number or other evidence satisfactory to the  
3 department confirming the federal extension. An extension under this  
4 subsection for the filing of a return under this chapter is not an  
5 extension of time to pay the tax due under this chapter.

6 NEW SECTION. **Sec. 508.** (1) If the federal income tax  
7 liabilities of both spouses are determined on a joint federal return  
8 for the taxable year, they must file a joint return under this  
9 chapter.

10 (2) Except as otherwise provided in this subsection, if the  
11 federal income tax liability of either spouse is determined on a  
12 separate federal return for the taxable year, they must file separate  
13 returns under this chapter. State registered domestic partners and  
14 spouses of the same sex may file a joint return under this chapter  
15 even if they filed separate federal returns for the taxable year.

16 (3) In any case in which a joint return is filed under this  
17 section, the liability of each spouse or state registered domestic  
18 partner is joint and several, unless:

19 (a) The spouse is relieved of liability for federal tax purposes  
20 as provided under 26 U.S.C. Sec. 6015 of the internal revenue code;  
21 or

22 (b) The department determines that the domestic partner qualifies  
23 for relief as provided by rule of the department. Such rule, to the  
24 extent possible without being inconsistent with this chapter, must  
25 follow 26 U.S.C. Sec. 6015.

26 NEW SECTION. **Sec. 509.** To the extent not inconsistent with the  
27 provisions of this chapter, the following sections apply to the  
28 administration of taxes imposed under this chapter: RCW 82.32.050,  
29 82.32.055, 82.32.060, 82.32.070, 82.32.080, 82.32.085, 82.32.090,  
30 82.32.100, 82.32.105, 82.32.110, 82.32.117, 82.32.120, 82.32.130,  
31 82.32.135, 82.32.150, 82.32.160, 82.32.170, 82.32.180, 82.32.190,  
32 82.32.200, 82.32.210, 82.32.212, 82.32.220, 82.32.230, 82.32.235,  
33 82.32.237, 82.32.240, 82.32.245, 82.32.265, 82.32.300, 82.32.310,  
34 82.32.320, 82.32.330, 82.32.340, 82.32.350, 82.32.360, 82.32.380,  
35 82.32.410, 82.32.805, and 82.32.808.

1        NEW SECTION.    **Sec. 510.**    (1) Any taxpayer who knowingly attempts  
2 to evade payment of the tax imposed under this chapter is guilty of a  
3 class C felony as provided in chapter 9A.20 RCW.

4        (2) Any taxpayer who knowingly fails to pay tax, make returns,  
5 keep records, or supply information, as required under this title, is  
6 guilty of a gross misdemeanor as provided in chapter 9A.20 RCW.

7        NEW SECTION.    **Sec. 511.**    See RCW 82.32.805 for the expiration  
8 date of new tax preferences for the tax imposed under this chapter.

9        NEW SECTION.    **Sec. 512.**    RCW 82.32.805 and 82.32.808 apply only  
10 with respect to new tax preferences, as defined in RCW 82.32.805,  
11 enacted after the effective date of this section.

12        NEW SECTION.    **Sec. 513.**    (1) All revenue collected under this  
13 chapter must be deposited into the student investment fund hereby  
14 created in the state treasury. Moneys in the fund may be spent only  
15 after appropriation. As provided in subsection (2) of this section,  
16 expenditures from the fund must be used only for common schools,  
17 higher education, and establishing a student investment reserve.

18        (2)(a) To the extent that funds are available, by June 30, 2017,  
19 and by June 30th of each year thereafter, the following amounts must  
20 be transferred from the student investment fund to the education  
21 legacy trust account created in RCW 83.100.230 for the support of the  
22 common schools:

- 23        (i) In fiscal year 2017, \$400,000,000;
- 24        (ii) In fiscal year 2018, \$439,000,000;
- 25        (iii) In fiscal year 2019, \$453,000,000;
- 26        (iv) In fiscal year 2020, \$466,000,000;
- 27        (v) In fiscal year 2021, \$477,000,000;

28        (vi) In fiscal year 2022, and each fiscal year thereafter, the  
29 amount transferred in the prior fiscal year increased by the fiscal  
30 growth factor.

31        (b) To the extent that funds are available after making the  
32 distribution under (a) of this subsection, by June 30, 2017, and by  
33 June 30th of each year thereafter, the following amounts must be  
34 transferred from the student investment fund to the education legacy  
35 trust account created in RCW 83.100.230 for higher education  
36 purposes:

- 37        (i) In fiscal year 2017, \$150,000,000;

1 (ii) In fiscal year 2018, \$186,000,000;  
2 (iii) In fiscal year 2019, \$192,000,000;  
3 (iv) In fiscal year 2020, \$198,000,000;  
4 (v) In fiscal year 2021, \$203,000,000;  
5 (vi) In fiscal year 2022, and each fiscal year thereafter, the  
6 amount transferred in the prior fiscal year increased by the fiscal  
7 growth factor.

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

10 (a) "Fiscal growth factor" means the sum of inflation and  
11 population change for the prior fiscal year.

12 (b) "Inflation" means the percentage change in the implicit price  
13 deflator for the United States for each fiscal year as published by  
14 the federal bureau of labor statistics.

15 (c) "Population change" means the percentage change in state  
16 population for the prior fiscal year as reported by the office of  
17 financial management.

18 NEW SECTION. **Sec. 514.** A new section is added to chapter 82.04  
19 RCW to read as follows:

20 (1) A deduction is allowed against a person's gross income of the  
21 business to the extent necessary to avoid taxing the same amounts  
22 under this chapter and section 502 of this act.

23 (2) This section is not subject to RCW 82.32.805 and 82.32.808  
24 (1) through (5).

25 **PART VI**  
26 **Repealing the Preferential B&O Tax Rate for Sellers of Prescription**  
27 **Drugs**

28 NEW SECTION. **Sec. 601.** RCW 82.04.272 (Tax on warehousing and  
29 reselling prescription drugs) and 2013 c 19 s 127, 2003 c 168 s 401,  
30 & 1998 c 343 s 1 are each repealed.

31 NEW SECTION. **Sec. 602.** Section 601 of this act applies to taxes  
32 due for reporting periods beginning on or after the effective date of  
33 section 601 of this act.

34 **PART VII**  
35 **Narrowing the Use Tax Exemption for Extracted Fuel**



1 **PART IX**

2 **Nexus for Excise Tax Purposes**

3 NEW SECTION. **Sec. 901.** (1) The legislature finds that states  
4 fail to collect more than twenty-three billion dollars annually in  
5 sales taxes from remote sales over the internet and through  
6 catalogues. The legislature further finds that Washington and its  
7 local governments will lose out on an estimated three hundred ninety-  
8 four million dollars in sales and use taxes in fiscal year 2015 from  
9 remote sales, reducing funds that would otherwise be available for  
10 the public education system, health care services, infrastructure,  
11 and other important public services.

12 (2) The legislature recognizes that states may not impose sales  
13 or use tax collection obligations on an out-of-state business unless  
14 the business has a substantial nexus with the taxing state. The  
15 legislature also recognizes that under the United States supreme  
16 court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*,  
17 386 U.S. 753 (1967), substantial nexus under the commerce clause  
18 requires a physical presence by the seller in the taxing state.  
19 Relying on the doctrine of stare decisis, the United States supreme  
20 court reaffirmed the physical presence nexus standard twenty-five  
21 years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

22 (3) The legislature further finds that the basis of the physical  
23 presence nexus standard was primarily justified by the complexity and  
24 burden on mail order sellers and other out-of-state sellers in  
25 complying with the sales tax laws in numerous jurisdictions at the  
26 state and local level all across the country. The legislature further  
27 finds that the supreme court's concerns underlying the *Bellas Hess*  
28 decision have been effectively addressed by advances in technology  
29 and simplified tax laws. For example, Washington and most other  
30 states with sales taxes allow or require electronic reporting and  
31 payment of the tax. Also, several states, including Washington, offer  
32 free online sales tax rate lookup tools. A number of private  
33 companies offer automated sales tax compliance solutions. In  
34 addition, sales tax laws have been simplified in many states,  
35 including Washington, through participation in the streamlined sales  
36 and use tax project and compliance with the streamlined sales and use  
37 tax agreement.

38 (4) The legislature further finds that *Bellas Hess* was decided  
39 one year before the first plans were developed for the computer

1 network that became the basis of the internet. The legislature  
2 further finds that since *Quill* was decided e-commerce has grown  
3 substantially, generating retail sales of three hundred five billion  
4 dollars in 2014, which have been growing at a rate of about fifteen  
5 percent for the last five years. The legislature further finds that  
6 like their brick-and-mortar competitors, online businesses receive  
7 benefits and opportunities provided by their market states, such as  
8 transportation networks, infrastructure, laws providing protection of  
9 business interests, access to the courts to protect valuable rights,  
10 and a regulated marketplace. However, the legislature finds that  
11 under the current physical presence nexus standard, online-only  
12 sellers have an unfair competitive advantage over in-state brick-and-  
13 mortar stores to the detriment of main street retailers. Online-only  
14 businesses have no geographical limitations to their marketplace; no  
15 costs of maintaining local physical retail stores, such as  
16 infrastructure costs, employee costs, and property taxes; and may not  
17 have to collect sales tax on sales to customers in states in which  
18 they do not have a physical presence, all of which lead to their  
19 ability to price their goods at a lower cost to consumers. The  
20 legislature further finds that even if the physical presence nexus  
21 standard was once a wise rule of law, it is no longer justifiable.

22 (5) The legislature further finds that the supreme court in its  
23 *Quill* decision implicitly invited the United States congress to  
24 resolve whether and to what extent states may impose a sales tax  
25 collection obligation on remote sellers. The legislature further  
26 finds that there is overwhelming support among the public, states,  
27 and municipalities, and many national and local associations  
28 representing brick-and-mortar businesses for federal legislation  
29 requiring remote sellers to collect and remit retail sales tax. The  
30 legislature further finds that despite such broad-based support,  
31 congress has failed to enact such legislation.

32 (6) The legislature agrees with Justice Kennedy's concurring  
33 option in the recent *Direct Marketing Association v. Brohl* decision  
34 (case no. 13-1032) that the court's *Quill* holding is "inflicting  
35 extreme harm and unfairness on the States," and that "[t]here is a  
36 powerful case to be made that a retailer doing extensive business  
37 within a State has a sufficiently 'substantial nexus' to justify  
38 imposing some minor tax-collection duty, even if that business is  
39 done through mail or the Internet." Justice Kennedy stated that "it  
40 is unwise to delay any longer a reconsideration of the Court's

1 holding in *Quill*," and he closed his opinion by inviting a direct  
2 challenge to *Quill* and *Bellas Hess*, saying that "[t]he legal system  
3 should find an appropriate case for this Court to reexamine *Quill* and  
4 *Bellas Hess*."

5 (7) The legislature finds that because Washington is unique in  
6 that it relies so heavily on sales tax to fund education and other  
7 vital state services, and because Washington has frequently been at  
8 the forefront of advancing technology and tax policy, it is incumbent  
9 upon this state to lead the way to a more fair and equitable modern  
10 marketplace where online businesses and brick-and-mortar businesses  
11 can compete based on quality of products and other nontax factors,  
12 which benefits all consumers. The legislature recognizes that the  
13 fast pace of technological change seen with the rapid growth of  
14 electronic commerce puts pressure on states to update their tax codes  
15 just as this state did in 2009 in adopting Engrossed Substitute House  
16 Bill No. 2075 addressing the excise taxation of digital products and  
17 again in 2010 in adopting economic nexus and market-based  
18 apportionment for business and occupation tax purposes in Second  
19 Engrossed Substitute Senate Bill No. 6143. The legislature finds that  
20 making such changes is not radical or to be unexpected, but is a  
21 rational means to avoid an ever-shrinking tax base resulting from an  
22 outdated tax code that has not kept up with significant changes in  
23 technology and the economy.

24 (8) Therefore, the legislature intends by this act to address the  
25 significant harm and unfairness brought about by the physical  
26 presence nexus rule by testing the boundaries of the rule. This act  
27 also sets up a legal challenge to the physical presence nexus rule  
28 that could potentially lead to the United States supreme court  
29 reevaluating *Bellas Hess* and *Quill* or congress enacting legislation  
30 authorizing and establishing the requirements for states to impose a  
31 sales tax collection duty on remote sellers. To achieve these  
32 objectives, this act establishes clear statutory guidelines for  
33 determining when sellers are required to collect Washington's sales  
34 tax. These guidelines clarify the extent of the traditional physical  
35 presence standard and also incorporate an "economic nexus" standard  
36 under which a remote seller would establish a substantial nexus with  
37 this state solely by generating a meaningful amount of sales into  
38 this state. This act also amends the statutory guidelines for  
39 determining whether a taxpayer has sufficient nexus for purposes of  
40 the state's business and occupation tax.



1        NEW SECTION.    **Sec. 902.**    A new section is added to chapter 82.08  
2    RCW to read as follows:

3        (1) A seller, including a remote seller, with a substantial nexus  
4    with this state must comply with the provisions of this chapter. A  
5    seller is deemed to have a substantial nexus with this state for  
6    purposes of the taxes imposed under this chapter if the seller has  
7    substantial nexus as provided in RCW 82.04.067 or as otherwise  
8    provided in this section.

9        (2) A seller is deemed to have a substantial nexus with this  
10   state if the seller makes retail sales to Washington customers in an  
11   aggregate amount exceeding ten thousand dollars during the calendar  
12   year and also meets one or more of the following criteria:

13        (a) The seller enters into an agreement with a resident of this  
14   state under which the resident, for a commission or other  
15   consideration, directly or indirectly refers potential customers,  
16   whether by a link on an internet web site or otherwise, to the remote  
17   seller, except as otherwise provided in subsection (3) of this  
18   section;

19        (b)(i) The seller offers its products for sale through one or  
20   more marketplaces operated by any marketplace facilitator that has a  
21   substantial nexus with this state; or

22        (ii) The seller or a person, including an affiliated person,  
23   other than a common carrier acting solely as a common carrier,  
24   engages in or performs any of the following activities in this state:

25        (A) Sells a similar line of products as the seller and does so  
26   under the same business name as the seller or a similar business name  
27   as the seller;

28        (B) Uses its employees, agents, representatives, or independent  
29   contractors in this state to promote or facilitate sales by the  
30   seller to purchasers in this state;

31        (C) Maintains, occupies, or uses an office, distribution  
32   facility, warehouse, storage place, or similar place of business in  
33   this state to facilitate the delivery or sale of tangible personal  
34   property sold by the seller to the seller's purchasers in this state;

35        (D) Uses, with the seller's consent or knowledge, trademarks,  
36   service marks, or trade names in this state that are the same or  
37   substantially similar to those used by the seller;

38        (E) Delivers, installs, assembles, or performs maintenance or  
39   repair services for the seller's purchasers in this state;

1 (F) Facilitates the sale of tangible personal property to  
2 purchasers in this state by allowing the seller's purchasers in this  
3 state to pick up or return tangible personal property sold by the  
4 seller at an office, distribution facility, warehouse, storage place,  
5 or similar place of business maintained by that person in this state;

6 (G) Shares management, business systems, business practices, or  
7 employees with the seller or, in the case of an affiliated person,  
8 engages in intercompany transactions related to the activities  
9 occurring with the seller to establish or maintain the seller's  
10 market in this state; or

11 (H) Conducts any other activities in this state that are  
12 significantly associated with the seller's ability to establish and  
13 maintain a market in this state for the seller's sales of tangible  
14 personal property to purchasers in this state; or

15 (c)(i) The seller contracts with a payment processor or merchant  
16 bank, or accepts credit cards issued either by a financial  
17 institution under a license from a credit card association or by an  
18 entity that also authorizes purchases and settles with consumers and  
19 merchants, if the payment processor, merchant bank, credit card  
20 association, or credit card issuer has a substantial nexus with this  
21 state for purposes of collecting the taxes imposed under this  
22 chapter.

23 (ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose  
24 the identity of payment processors, credit card associations, credit  
25 card issuers described in (c)(i) of this subsection (2), and merchant  
26 banks that have a substantial nexus with this state for purposes of  
27 collecting the taxes imposed under this chapter.

28 (3) Substantial nexus under subsection (2)(a) of this section  
29 does not apply if the seller establishes by a preponderance of the  
30 evidence that the resident with whom the remote seller has an  
31 agreement did not engage in any solicitation in this state on behalf  
32 of the remote seller that would satisfy the nexus requirement of the  
33 United States Constitution during the calendar year in question.  
34 Evidence may be shown by:

35 (a) Establishing that (i) each in-state person with whom the  
36 remote seller has an agreement is prohibited from engaging in any  
37 solicitation activities in this state that refer potential customers  
38 to the remote seller, and (ii) such in-state person or persons have  
39 complied with that prohibition; or

40 (b) Any other means as may be approved by the department.

1 (4)(a) For purposes of subsection (2)(b)(i) of this section, a  
2 marketplace facilitator is deemed to have a substantial nexus with  
3 this state if:

4 (i) The marketplace facilitator or any affiliated person  
5 maintains a physical presence in this state to engage in any of the  
6 activities described in subsection (7)(a)(i) or (ii) of this section;  
7 or

8 (ii) The marketplace facilitator generated more than ten thousand  
9 dollars of gross receipts in the preceding calendar year from retail  
10 sales made through its physical or electronic marketplace by sellers  
11 that are physically located in this state. For purposes of this  
12 subsection (4)(a)(ii), a seller is presumed to be physically located  
13 in this state if the address for the seller maintained in the  
14 business records of the marketplace facilitator is in this state.

15 (b) Pursuant to RCW 82.32.330(3)(u), the department may disclose  
16 the identity of marketplace facilitators that have a substantial  
17 nexus with this state for purposes of collecting the taxes imposed  
18 under this chapter.

19 (5) A seller that has a substantial nexus with this state in any  
20 tax year as provided in subsections (1) through (4) of this section  
21 continues to have a substantial nexus with this state for the entire  
22 tax year immediately following the tax year during which the seller  
23 ceased to have a substantial nexus with this state as provided in  
24 subsections (1) through (4) of this section.

25 (6) For purposes of this section, persons are "affiliated  
26 persons" with respect to each other where one of the persons has an  
27 ownership interest of more than five percent, whether direct or  
28 indirect, in the other, or where an ownership interest of more than  
29 five percent, whether direct or indirect, is held in each of the  
30 persons by another person or by a group of other persons who are  
31 affiliated with respect to each other.

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

34 (a) "Marketplace facilitator" means a person that contracts with  
35 sellers to facilitate, for compensation, the sale of the seller's  
36 products through a physical or electronic marketplace, and engages,  
37 either directly or indirectly, through one or more affiliated  
38 persons, in:

39 (i) Any of the following:

- 1 (A) Transmitting or otherwise communicating the offer or  
2 acceptance between the buyer and seller;
- 3 (B) Owning or operating the infrastructure, electronic or  
4 physical, or technology that brings buyers and sellers together;
- 5 (C) Providing a virtual currency that buyers are allowed or  
6 required to use to purchase products from the seller; or
- 7 (D) Software development or research and development activities  
8 related to any of the activities described in (a)(i)(A) through (C)  
9 or (a)(ii)(A) through (H) of this subsection (7); and
- 10 (ii) Any of the following activities with respect to the seller's  
11 products:
- 12 (A) Payment processing services;
- 13 (B) Fulfillment or storage services;
- 14 (C) Listing products for sale;
- 15 (D) Setting prices;
- 16 (E) Branding sales as those of the marketplace facilitator;
- 17 (F) Order taking;
- 18 (G) Advertising or promotion; or
- 19 (H) Providing customer service or accepting or assisting with  
20 returns or exchanges.
- 21 (b) "Merchant bank" means a financial institution or any other  
22 member of a credit card network that allows the seller to accept  
23 credit card payments and is responsible for depositing transaction  
24 proceeds into the seller's designated account.
- 25 (c) "Payment processor" means a person that contracts directly  
26 with a seller to provide settlement for the seller's credit card,  
27 debit card, or other payment transactions.
- 28 (d) "Product" means any property or service that is sold in a  
29 sale at retail as defined in RCW 82.04.050.
- 30 (e) "Remote seller" means a seller that makes retail sales of  
31 products from one state to buyers located in other states. With  
32 respect to this state, a remote seller does not include any seller  
33 that is physically located in this state.
- 34 (f) "Resident" means a person who is domiciled in this state or  
35 who maintains a place of abode in this state. A person is presumed to  
36 be a resident of this state if the person has a mailing address in  
37 this state.

38 NEW SECTION. **Sec. 903.** A new section is added to chapter 82.08  
39 RCW to read as follows:

1 (1) For purposes of this chapter, a marketplace facilitator is  
2 deemed to be an agent of any marketplace seller making retail sales  
3 through the marketplace facilitator's physical or electronic  
4 marketplace. A marketplace facilitator must collect the taxes imposed  
5 under this chapter on all retail sales made through the marketplace  
6 facilitator's marketplace and sourced to this state under RCW  
7 82.32.730, whether as principal or as the agent of a marketplace  
8 seller.

9 (2) A marketplace facilitator is relieved of liability under this  
10 chapter for failure to collect the correct amount of tax to the  
11 extent that the marketplace facilitator can show to the department's  
12 satisfaction that the error was due to incorrect information given to  
13 the marketplace facilitator by the marketplace seller, unless the  
14 marketplace facilitator and marketplace seller are affiliated persons  
15 as defined in section 902 of this act. Where the marketplace  
16 facilitator is relieved of liability under this subsection (2), the  
17 marketplace seller is solely liable for the amount of uncollected tax  
18 due.

19 (3) A marketplace seller with a substantial nexus with this state  
20 is relieved of its obligation to collect the taxes imposed under this  
21 chapter on all taxable retail sales through a marketplace operated by  
22 a marketplace facilitator if the marketplace seller has obtained  
23 documentation from the marketplace facilitator indicating that the  
24 marketplace facilitator is registered with the department and will  
25 collect all applicable taxes due under this chapter on all taxable  
26 retail sales made on behalf of the marketplace seller through the  
27 marketplace operated by the marketplace facilitator. The  
28 documentation required by this subsection (3) must be provided in a  
29 form and manner prescribed by or acceptable to the department. This  
30 subsection (3) does not relieve a marketplace seller from liability  
31 for uncollected taxes due under this chapter resulting from a  
32 marketplace facilitator's failure to collect the proper amount of tax  
33 due when the error was due to incorrect information given to the  
34 marketplace facilitator by the marketplace seller.

35 (4) For purposes of this section, the following definitions  
36 apply:

37 (a) "Marketplace facilitator" has the same meaning as in section  
38 902 of this act.

39 (b) "Marketplace seller" means a seller that makes retail sales  
40 through any physical or electronic marketplaces owned or operated by

1 a marketplace facilitator, regardless of whether the seller is  
2 required to be registered with the department as provided in RCW  
3 82.32.030.

4 **Sec. 904.** RCW 82.04.066 and 2010 1st sp.s. c 23 s 103 are each  
5 amended to read as follows:

6 "Engaging within this state" and "engaging within the state,"  
7 when used in connection with any apportionable activity as defined in  
8 RCW 82.04.460 or making retail or wholesale sales taxable under RCW  
9 82.04.250 (1) or (2), 82.04.257(1), or 82.04.270, means that a person  
10 generates gross income of the business from sources within this  
11 state, such as customers or intangible property located in this  
12 state, regardless of whether the person is physically present in this  
13 state.

14 **Sec. 905.** RCW 82.04.067 and 2010 1st sp.s. c 23 s 104 are each  
15 amended to read as follows:

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

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

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

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

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

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

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

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

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

34 (b)(i) Property owned by the taxpayer, other than loans and  
35 credit card receivables owned by the taxpayer, is valued at its  
36 original cost basis. Loans and credit card receivables owned by the  
37 taxpayer are valued at their outstanding principal balance, without  
38 regard to any reserve for bad debts. However, if a loan or credit

1 card receivable is charged off in whole or in part for federal income  
2 tax purposes, the portion of the loan or credit card receivable  
3 charged off is deducted from the outstanding principal balance.

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

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

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

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

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

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

35 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this  
36 subsection (2), the definitions in the multistate tax commission's  
37 recommended formula for the apportionment and allocation of net  
38 income of financial institutions as existing on June 1, 2010, or such  
39 subsequent date as may be provided by the department by rule,  
40 consistent with the purposes of this section, apply to this section.

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

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

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

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

22 (c) Nonemployee compensation is paid in this state if the service  
23 performed by the representative third party occurs (~~entirely or~~  
24 ~~primarily~~) within this state. If the service performed by the  
25 representative third party occurs both within and outside of this  
26 state, a portion of the compensation paid to the representative third  
27 party must be allocated to this state based on any method approved by  
28 the department that reasonably approximates the representative third  
29 party's compensation in this state.

30 (d) For purposes of this subsection, "compensation" means wages,  
31 salaries, commissions, and any other form of remuneration paid to  
32 employees or nonemployees and defined as gross income under 26 U.S.C.  
33 Sec. 61 of the federal internal revenue code of 1986, as existing on  
34 June 1, 2010.

35 (4) Receipts counting toward the thresholds in subsection  
36 (1)(c)(iii) and (iv) of this section are:

37 (a) Those amounts included in the numerator of the receipts  
38 factor under RCW 82.04.462 (~~and~~);



1       **(b)** For financial institutions, those amounts included in the  
2 numerator of the receipts factor under the rule adopted by the  
3 department as authorized in RCW 82.04.460(2); and

4       **(c)** For persons taxable under RCW 82.04.250 (1) or (2),  
5 82.04.257(1), or 82.04.270, the gross proceeds of sales taxable under  
6 those statutory provisions and sourced to this state in accordance  
7 with RCW 82.32.730.

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

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

27       (6) Subsections (1) through (5) of this section only apply with  
28 respect to the taxes imposed (~~under this chapter~~) on persons  
29 engaged in apportionable activities as defined in RCW 82.04.460 or  
30 making retail or wholesale sales taxable under RCW 82.04.250 (1) or  
31 (2), 82.04.257(1), or 82.04.270. For purposes of the taxes imposed  
32 under this chapter on any activity not included in the definition of  
33 apportionable activities in RCW 82.04.460 other than the activities  
34 taxed under RCW 82.04.250 (1) or (2), 82.04.257(1), or 82.04.270, a  
35 person is deemed to have a substantial nexus with this state if the  
36 person has a physical presence in this state, which need only be  
37 demonstrably more than a slightest presence. For purposes of this  
38 subsection, a person is physically present in this state if the  
39 person has property or employees in this state. A person is also  
40 physically present in this state if the person, either directly or

1 through an agent or other representative, engages in activities in  
2 this state that are significantly associated with the person's  
3 ability to establish or maintain a market for its products in this  
4 state.

5 (7) Notwithstanding subsection (6) of this section, during any  
6 time that the state is prevented from compelling remote sellers  
7 without any physical presence in this state to collect the taxes  
8 imposed under chapter 82.08 RCW as a result of a court's ruling and  
9 the lack of remote seller collection authority provided under federal  
10 law, a person making sales at retail taxed under RCW 82.04.250 (1) or  
11 (2) or 82.04.257(1) has a substantial nexus with this state for  
12 purposes of the taxes imposed under RCW 82.04.250 (1) or (2) or  
13 82.04.257(1) only if the person has a substantial nexus with this  
14 state for purposes of collecting the taxes imposed under chapter  
15 82.08 RCW. For purposes of this subsection, "remote seller" has the  
16 same meaning as in section 902 of this act.

17 NEW SECTION. Sec. 906. RCW 82.04.424 (Exemptions—Certain in-  
18 state activities) and 2003 c 76 s 2 are each repealed.

19 **Sec. 907.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to  
20 read as follows:

21 (1) The tax imposed in this chapter must be paid by the buyer to  
22 the seller. Each seller must collect from the buyer the full amount  
23 of the tax payable in respect to each taxable sale in accordance with  
24 the schedule of collections adopted by the department under the  
25 provisions of RCW 82.08.060.

26 (2) The tax required by this chapter, to be collected by the  
27 seller, is deemed to be held in trust by the seller until paid to the  
28 department. Any seller who appropriates or converts the tax collected  
29 to the seller's own use or to any use other than the payment of the  
30 tax to the extent that the money required to be collected is not  
31 available for payment on the due date as prescribed in this chapter  
32 is guilty of a gross misdemeanor.

33 (3) Except as otherwise provided in this section, if any seller  
34 fails to collect the tax imposed in this chapter or, having collected  
35 the tax, fails to pay it to the department in the manner prescribed  
36 by this chapter, whether such failure is the result of the seller's  
37 own acts or the result of acts or conditions beyond the seller's

1 control, the seller is, nevertheless, personally liable to the state  
2 for the amount of the tax.

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

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

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

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

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

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

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

37 (c) Sellers are relieved from personal liability for the amount  
38 of tax if they obtain a blanket exemption certificate for a purchaser  
39 with which the seller has a recurring business relationship. The  
40 department may not request from a seller renewal of blanket exemption

1 certificates or updates of exemption certificate information or data  
2 elements if there is a recurring business relationship between the  
3 buyer and seller. For purposes of this subsection (7)(c), a  
4 "recurring business relationship" means at least one sale transaction  
5 within a period of twelve consecutive months.

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

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

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

30 (10) Where a buyer has failed to pay to the seller the tax  
31 imposed by this chapter and the seller has not paid the amount of the  
32 tax to the department, the department may, in its discretion, proceed  
33 directly against the buyer for collection of the tax. If the  
34 department proceeds directly against the buyer for collection of the  
35 tax as authorized in this subsection, the department may add a  
36 penalty of ten percent of the unpaid tax to the amount of the tax due  
37 for failure of the buyer to pay the tax to the seller, regardless of  
38 when the tax may be collected by the department. In addition to the  
39 penalty authorized in this subsection, all of the provisions of  
40 chapter 82.32 RCW, including those relative to interest and

1 penalties, apply. For the sole purpose of applying the various  
2 provisions of chapter 82.32 RCW, the twenty-fifth day of the month  
3 following the tax period in which the purchase was made will be  
4 considered as the due date of the tax.

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

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

10 ~~(i) The storage, dissemination, or display of advertising;~~

11 ~~(ii) The taking of orders; or~~

12 ~~(iii) The processing of payments; and~~

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

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

24 ~~(13) For purposes of this section:)) The definitions in this  
25 subsection apply throughout this section unless the context clearly  
26 requires otherwise.~~

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

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

34 **Sec. 908.** RCW 82.12.040 and 2015 c 1 s 11 (Initiative Measure  
35 No. 594) are each amended to read as follows:

36 (1) Every person who ~~((maintains in this state a place of  
37 business or a stock of goods, or engages in business activities  
38 within this state, shall)) has a substantial nexus with this state as  
39 provided in section 902 of this act must obtain from the department a~~

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

21 (2) Every person who engages in this state in the business of  
22 acting as an independent selling agent for persons who do not hold a  
23 valid certificate of registration, and who receives compensation by  
24 reason of sales of tangible personal property, digital goods, digital  
25 codes, digital automated services, extended warranties, or sales of  
26 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g),  
27 (3)(a), or (6)(b), of his or her principals for use in this state,  
28 must, at the time such sales are made, collect from the purchasers  
29 the tax imposed on the purchase price under this chapter, and for  
30 that purpose is deemed a retailer as defined in this chapter.

31 (3) The tax required to be collected by this chapter is deemed to  
32 be held in trust by the retailer until paid to the department, and  
33 any retailer who appropriates or converts the tax collected to the  
34 retailer's own use or to any use other than the payment of the tax  
35 provided herein to the extent that the money required to be collected  
36 is not available for payment on the due date as prescribed is guilty  
37 of a misdemeanor. In case any seller fails to collect the tax herein  
38 imposed or having collected the tax, fails to pay the same to the  
39 department in the manner prescribed, whether such failure is the  
40 result of the seller's own acts or the result of acts or conditions

1 beyond the seller's control, the seller is nevertheless personally  
2 liable to the state for the amount of such tax, unless the seller has  
3 taken from the buyer a copy of a direct pay permit issued under RCW  
4 82.32.087.

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

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

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

14 ~~(i) The storage, dissemination, or display of advertising;~~

15 ~~(ii) The taking of orders; or~~

16 ~~(iii) The processing of payments; and~~

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

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

28 ~~(7))~~ Notwithstanding subsections (1) through (4) of this  
29 section, any person making sales is not obligated to collect the tax  
30 imposed by this chapter if the person would have been obligated to  
31 collect retail sales tax on the sale absent a specific exemption  
32 provided in chapter 82.08 RCW, and there is no corresponding use tax  
33 exemption in this chapter. Nothing in this subsection ~~((7))~~ (5) may  
34 be construed as relieving purchasers from liability for reporting and  
35 remitting the tax due under this chapter directly to the department.

36 ~~((8))~~ (6) Notwithstanding subsections (1) through (4) of this  
37 section, any person making sales is not obligated to collect the tax  
38 imposed by this chapter if the state is prohibited under the  
39 Constitution or laws of the United States from requiring the person  
40 to collect the tax imposed by this chapter.

1 ((+9)) (7) Notwithstanding subsections (1) through (4) of this  
2 section, any licensed dealer facilitating a firearm sale or transfer  
3 between two unlicensed persons by conducting background checks under  
4 chapter 9.41 RCW is not obligated to collect the tax imposed by this  
5 chapter.

6 **PART X**

7 **Real Estate Excise Tax on Foreclosures**

8 NEW SECTION. **Sec. 1001.** The legislature finds that the existing  
9 real estate excise tax exemption for transfers occurring in the  
10 context of bank foreclosures and the enforcement of judgments by  
11 creditors does not benefit distressed homeowners except in limited  
12 circumstances. The exemption has been broadly used to exempt sales  
13 made to third-party buyers by combining an unrelated sales  
14 transaction into the foreclosure proceeding. In addition, there have  
15 been questions raised in litigation whether the exemption applies to  
16 orders of sales arising in any court context, rather than those  
17 expressly identified in the existing exemption. It is the intent of  
18 the legislature to (1) eliminate the real estate excise tax exemption  
19 for transfers that occur in foreclosures except in circumstances  
20 where the tax would impact the owner of the property, and (2)  
21 restructure the existing statute to preserve the exemption for deeds  
22 given in lieu of the foreclosure process and transfers made to  
23 extinguish existing security interests. Because this restructuring is  
24 intended only to clarify and preserve existing exemptions, the  
25 legislature does not intend for the provisions of RCW 82.32.805 or  
26 82.32.808 to apply to this act.

27 **Sec. 1002.** RCW 82.45.010 and 2014 c 58 s 24 are each amended to  
28 read as follows:

29 (1) As used in this chapter, the term "sale" has its ordinary  
30 meaning and includes any conveyance, grant, assignment, quitclaim, or  
31 transfer of the ownership of or title to real property, including  
32 standing timber, or any estate or interest therein for a valuable  
33 consideration, and any contract for such conveyance, grant,  
34 assignment, quitclaim, or transfer, and any lease with an option to  
35 purchase real property, including standing timber, or any estate or  
36 interest therein or other contract under which possession of the  
37 property is given to the purchaser, or any other person at the



1 purchaser's direction, and title to the property is retained by the  
2 vendor as security for the payment of the purchase price. The term  
3 also includes the grant, assignment, quitclaim, sale, or transfer of  
4 improvements constructed upon leased land.

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

9 (b) For the sole purpose of determining whether, pursuant to the  
10 exercise of an option, a controlling interest was transferred or  
11 acquired within a twelve-month period, the date that the option  
12 agreement was executed is the date on which the transfer or  
13 acquisition of the controlling interest is deemed to occur. For all  
14 other purposes under this chapter, the date upon which the option is  
15 exercised is the date of the transfer or acquisition of the  
16 controlling interest.

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

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

26 (ii) When persons are not commonly owned or controlled, they must  
27 be treated as acting in concert only when the unity with which the  
28 purchasers have negotiated and will consummate the transfer of  
29 ownership interests supports a finding that they are acting as a  
30 single entity. If the acquisitions are completely independent, with  
31 each purchaser buying without regard to the identity of the other  
32 purchasers, then the acquisitions are considered separate  
33 acquisitions.

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

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

36 (b) A transfer by transfer on death deed, to the extent that it  
37 is not in satisfaction of a contractual obligation of the decedent  
38 owed to the recipient of the property.

39 (c) A transfer of any leasehold interest other than of the type  
40 mentioned above.

1 (d) A cancellation or forfeiture of a vendee's interest in a  
2 contract for the sale of real property, whether or not such contract  
3 contains a forfeiture clause, or deed in lieu of foreclosure of (~~a~~  
4 ~~mortgage~~) either a mortgage or deed of trust, except to the extent  
5 of any additional consideration provided to the grantor.

6 (e) The partition of property by tenants in common by agreement  
7 or as the result of a court decree.

8 (f) The assignment of property or interest in property from one  
9 spouse or one domestic partner to the other spouse or other domestic  
10 partner in accordance with the terms of a decree of dissolution of  
11 marriage or state registered domestic partnership or in fulfillment  
12 of a property settlement agreement.

13 (g) The assignment or other transfer of a vendor's interest in a  
14 contract for the sale of real property, even though accompanied by a  
15 conveyance of the vendor's interest in the real property involved.

16 (h) Transfers by appropriation or decree in condemnation  
17 proceedings brought by the United States, the state or any political  
18 subdivision thereof, or a municipal corporation.

19 (i) A mortgage, deed of trust, or other transfer of an interest  
20 in real property merely to secure a debt, or the assignment,  
21 reconveyance, or release thereof.

22 (j) Any transfer or conveyance made pursuant to a foreclosure of  
23 a mortgage or deed of trust, or an order of sale by the court in any  
24 mortgage, deed of trust, or lien foreclosure proceeding or upon  
25 execution of a judgment(~~(, or deed in lieu of foreclosure to satisfy~~  
26 ~~a mortgage or deed of trust)~~) pursuant to chapter 6.17 RCW, when:

27 (i) The transfer or conveyance is to other than the mortgagee,  
28 beneficiary of the deed of trust, lienholder, or judgment creditor,  
29 and the selling price exceeds the amount of the lien, security  
30 interest, or judgment that is the subject of the foreclosure or  
31 execution; or

32 (ii) The transfer or conveyance is to the United States, this  
33 state, or any political subdivision thereof, or a municipal  
34 corporation of this state.

35 (k) A conveyance to the federal housing administration or  
36 veterans administration by an authorized mortgagee made pursuant to a  
37 contract of insurance or guaranty with the federal housing  
38 administration or veterans administration.

39 (l) A transfer in compliance with the terms of any lease or  
40 contract upon which the tax as imposed by this chapter has been paid

1 or where the lease or contract was entered into prior to the date  
2 this tax was first imposed.

3 (m) The sale of any grave or lot in an established cemetery.

4 (n) A sale by the United States, this state or any political  
5 subdivision thereof, or a municipal corporation of this state.

6 (o) A sale to a regional transit authority or public corporation  
7 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
8 81.112.300.

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

34 (q)(i) A transfer that for federal income tax purposes does not  
35 involve the recognition of gain or loss for entity formation,  
36 liquidation or dissolution, and reorganization, including but not  
37 limited to nonrecognition of gain or loss because of application of  
38 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal  
39 revenue code of 1986, as amended.

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

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

22 **Sec. 1003.** RCW 82.45.080 and 2010 1st sp.s. c 23 s 210 are each  
23 amended to read as follows:

24 (1) Except as otherwise provided in this chapter, the tax levied  
25 under this chapter is the obligation of the seller and the department  
26 may, at the department's option, enforce the obligation through an  
27 action of debt against the seller or the department may proceed in  
28 the manner prescribed for the foreclosure of mortgages. The  
29 department's use of one course of enforcement is not an election not  
30 to pursue the other.

31 (2) When a transfer or conveyance made pursuant to a judicial or  
32 nonjudicial foreclosure of a mortgage, deed of trust, lien, or  
33 enforcement of a judgment is subject to tax under this chapter, and  
34 notwithstanding any other provisions of law, the tax levied under  
35 this chapter is the obligation of the transferee or grantee, and  
36 provisions of this chapter applicable to the seller apply to the  
37 transferee or grantee. The department may enforce the obligation  
38 against the transferee or grantee as provided in subsection (1) of  
39 this section.



PART XII

Technical Amendments

1  
2  
3       **Sec. 1201.** RCW 82.04.440 and 2011 c 2 s 205 are each amended to  
4 read as follows:

5       (1) Every person engaged in activities that are subject to tax  
6 under two or more provisions of RCW 82.04.230 through 82.04.298,  
7 inclusive, is taxable under each provision applicable to those  
8 activities.

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

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

29       (4) Persons taxable under RCW 82.04.230, 82.04.240,  
30 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (4),  
31 (~~((11), or (12))~~) (10), or (11), including those persons who are also  
32 taxable under RCW 82.04.261, with respect to extracting or  
33 manufacturing products in this state are allowed a credit against  
34 those taxes for any (i) gross receipts taxes paid to another state  
35 with respect to the sales of the products so extracted or  
36 manufactured in this state, (ii) manufacturing taxes paid with  
37 respect to the manufacturing of products using ingredients so  
38 extracted in this state, or (iii) manufacturing taxes paid with  
39 respect to manufacturing activities completed in another state for

1 products so manufactured in this state. The amount of the credit may  
2 not exceed the tax liability arising under this chapter with respect  
3 to the extraction or manufacturing of those products.

4 (5) For the purpose of this section:

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

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

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

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

16 (c) "Manufacturing tax" means a gross receipts tax imposed on the  
17 act or privilege of engaging in business as a manufacturer, and  
18 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,  
19 82.04.2909(1), 82.04.260 (1), (2), (4), (~~(11)~~, and ~~(12)~~) (10), and  
20 (11), and 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on  
21 persons who are engaged in business as a manufacturer; and (iii)  
22 similar gross receipts taxes paid to other states.

23 (d) "Extracting tax" means a gross receipts tax imposed on the  
24 act or privilege of engaging in business as an extractor, and  
25 includes (i) the tax imposed on extractors in RCW 82.04.230 and  
26 82.04.260(~~(12)~~) (11); (ii) the tax imposed under RCW 82.04.261 on  
27 persons who are engaged in business as an extractor; and (iii)  
28 similar gross receipts taxes paid to other states.

29 (e) "Business," "manufacturer," "extractor," and other terms used  
30 in this section have the meanings given in RCW 82.04.020 through  
31 (~~82.04.212~~ [~~82.04.217~~]) 82.04.217, notwithstanding the use of those  
32 terms in the context of describing taxes imposed by other states.

### 33 PART XIII

#### 34 Miscellaneous Technical Provisions

35 NEW SECTION. **Sec. 1301.** Sections 501 through 513 of this act  
36 constitute a new chapter in Title 82 RCW.

1        NEW SECTION.    **Sec. 1302.**    Notwithstanding any common law rule of  
2 strict construction of statutes imposing taxes, part V of this act,  
3 being necessary for the welfare of the state and its inhabitants,  
4 must be liberally construed in support of the tax.

5        NEW SECTION.    **Sec. 1303.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

9        NEW SECTION.    **Sec. 1304.**    This act is necessary for the immediate  
10 preservation of the public peace, health, or safety, or support of  
11 the state government and its existing public institutions, and takes  
12 effect July 1, 2015.

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