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HOUSE BILL 1904

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State of Washington

65th Legislature

2017 Regular Session

By Representative Smith

Read first time 02/02/17. Referred to Committee on Technology & Economic Development.

1 AN ACT Relating to the sale and taxation of Washingtonians'  
2 personal information and related data; amending RCW 82.04.050,  
3 82.04.066, 82.04.192, 82.04.2907, 82.04.460, 82.04.462, 82.08.0291,  
4 and 82.32.087; adding a new section to chapter 82.04 RCW; creating a  
5 new section; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature intends to update and  
8 adapt state tax policy to the forms of commerce that have emerged  
9 with expanded internet access. The legislature recognizes that the  
10 internet is used: To seek out and apply for jobs, to communicate with  
11 health care providers, to apply for regulatory permits and licenses,  
12 for mapping and navigation, for social engagement, and for the  
13 consumption of news and entertainment.

14 (2) The legislature further recognizes that those who provide  
15 internet services and web applications have access to vast amounts of  
16 information about their customers including when we are online, where  
17 we are physically located when we are online, how long we stay  
18 online, what devices we use to access the internet, what web sites we  
19 visit, what applications we use, what sort of medical and health  
20 information we search for, what advertisements we view, how we  
21 entertain ourselves, and what we purchase.

1           (3) The legislature finds that there are various businesses  
2 engaged in accumulating the personal data that is available to be  
3 collected about people as they use the internet, and aggregating or  
4 compiling that information and reselling it. This is a new business  
5 model that has flourished and is anticipated to grow as more people  
6 and more devices are connected to the internet with ever-increasing  
7 frequency for an ever greater number of innovative applications. As  
8 such, the legislature intends to have this category of business  
9 activity set apart with its own individual tax rate, so that the  
10 number of businesses and volume of business activity in this category  
11 can be transparent to policymakers and our citizens.

12           NEW SECTION.   **Sec. 2.** A new section is added to chapter 82.04  
13 RCW to be codified between RCW 82.04.230 and 82.04.298 to read as  
14 follows:

15           (1) Upon every person engaging within this state in the business  
16 of making sales of personal information or exchanging personal  
17 information for consideration; as to such persons the amount of tax  
18 with respect to such business is equal to the gross income of the  
19 business multiplied by the rate of 3.3 percent.

20           (2) For the purposes of this section, "personal information"  
21 means information that identifies, relates to, describes, or is  
22 capable of being associated with, a particular individual, including  
23 but not limited to his or her name; physical address or other  
24 location information; telephone number; email address; internet  
25 provider address; signature; physical characteristics or description;  
26 biometric data; driver's license number, state identification card  
27 number, passport number, social security number, or other government-  
28 issued identification number; bank account number, debit card number,  
29 credit card number, or any other financial information; insurance  
30 information; medical information; employment information; and  
31 educational information. "Personal information" also includes browser  
32 habits, consumer preferences and any other data that can be  
33 attributed to an individual and can be used for marketing, or  
34 determining access and costs related to insurance, credit, or health  
35 care. "Personal information" does not include photographs.

36           **Sec. 3.** RCW 82.04.050 and 2015 3rd sp.s. c 6 s 1105 are each  
37 amended to read as follows:

1 (1)(a) "Sale at retail" or "retail sale" means every sale of  
2 tangible personal property (including articles produced, fabricated,  
3 or imprinted) to all persons irrespective of the nature of their  
4 business and including, among others, without limiting the scope  
5 hereof, persons who install, repair, clean, alter, improve,  
6 construct, or decorate real or personal property of or for consumers  
7 other than a sale to a person who:

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

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

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

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

29 (v) Purchases for the purpose of providing the property to  
30 consumers as part of competitive telephone service, as defined in RCW  
31 82.04.065; or

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

37 (b) The term includes every sale of tangible personal property  
38 that is used or consumed or to be used or consumed in the performance  
39 of any activity defined as a "sale at retail" or "retail sale" even

1 though such property is resold or used as provided in (a)(i) through  
2 (vi) of this subsection following such use.

3 (c) The term also means every sale of tangible personal property  
4 to persons engaged in any business that is taxable under RCW  
5 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

9 (a) The installing, repairing, cleaning, altering, imprinting, or  
10 improving of tangible personal property of or for consumers,  
11 including charges made for the mere use of facilities in respect  
12 thereto, but excluding charges made for the use of self-service  
13 laundry facilities, and also excluding sales of laundry service to  
14 nonprofit health care facilities, and excluding services rendered in  
15 respect to live animals, birds and insects;

16 (b) The constructing, repairing, decorating, or improving of new  
17 or existing buildings or other structures under, upon, or above real  
18 property of or for consumers, including the installing or attaching  
19 of any article of tangible personal property therein or thereto,  
20 whether or not such personal property becomes a part of the realty by  
21 virtue of installation, and also includes the sale of services or  
22 charges made for the clearing of land and the moving of earth  
23 excepting the mere leveling of land used in commercial farming or  
24 agriculture;

25 (c) The constructing, repairing, or improving of any structure  
26 upon, above, or under any real property owned by an owner who conveys  
27 the property by title, possession, or any other means to the person  
28 performing such construction, repair, or improvement for the purpose  
29 of performing such construction, repair, or improvement and the  
30 property is then reconveyed by title, possession, or any other means  
31 to the original owner;

32 (d) The cleaning, fumigating, razing, or moving of existing  
33 buildings or structures, but does not include the charge made for  
34 janitorial services; and for purposes of this section the term  
35 "janitorial services" means those cleaning and caretaking services  
36 ordinarily performed by commercial janitor service businesses  
37 including, but not limited to, wall and window washing, floor  
38 cleaning and waxing, and the cleaning in place of rugs, drapes and  
39 upholstery. The term "janitorial services" does not include painting,

1 papering, repairing, furnace or septic tank cleaning, snow removal or  
2 sandblasting;

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

6 (f) The furnishing of lodging and all other services by a hotel,  
7 rooming house, tourist court, motel, trailer camp, and the granting  
8 of any similar license to use real property, as distinguished from  
9 the renting or leasing of real property, and it is presumed that the  
10 occupancy of real property for a continuous period of one month or  
11 more constitutes a rental or lease of real property and not a mere  
12 license to use or enjoy the same. For the purposes of this  
13 subsection, it is presumed that the sale of and charge made for the  
14 furnishing of lodging for a continuous period of one month or more to  
15 a person is a rental or lease of real property and not a mere license  
16 to enjoy the same;

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

19 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)  
20 of this subsection when such sales or charges are for property, labor  
21 and services which are used or consumed in whole or in part by such  
22 persons in the performance of any activity defined as a "sale at  
23 retail" or "retail sale" even though such property, labor and  
24 services may be resold after such use or consumption. Nothing  
25 contained in this subsection may be construed to modify subsection  
26 (1) of this section and nothing contained in subsection (1) of this  
27 section may be construed to modify this subsection.

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

33 (a) Abstract, title insurance, and escrow services;

34 (b) ~~((Credit bureau services;~~

35 ~~(e))~~ Automobile parking and storage garage services;

36 ~~((d))~~ (c) Landscape maintenance and horticultural services but  
37 excluding (i) horticultural services provided to farmers and (ii)  
38 pruning, trimming, repairing, removing, and clearing of trees and  
39 brush near electric transmission or distribution lines or equipment,  
40 if performed by or at the direction of an electric utility;

1        ~~((f))~~ (d) Service charges associated with tickets to  
2 professional sporting events;

3        ~~((f))~~ (e) The following personal services: Tanning salon  
4 services, tattoo parlor services, steam bath services, turkish bath  
5 services, escort services, and dating services; and

6        ~~((g))~~ (f)(i) Operating an athletic or fitness facility,  
7 including all charges for the use of such a facility or for any  
8 associated services and amenities, except as provided in ~~((g))~~ (f)  
9 (ii) of this subsection.

10       (ii) Notwithstanding anything to the contrary in ~~((g))~~ (f)(i)  
11 of this subsection (3), the term "sale at retail" and "retail sale"  
12 under this subsection does not include:

13        (A) Separately stated charges for the use of an athletic or  
14 fitness facility where such use is primarily for a purpose other than  
15 engaging in or receiving instruction in a physical fitness activity;

16        (B) Separately stated charges for the use of a discrete portion  
17 of an athletic or fitness facility, other than a pool, where such  
18 discrete portion of the facility does not by itself meet the  
19 definition of "athletic or fitness facility" in this subsection;

20        (C) Separately stated charges for services, such as advertising,  
21 massage, nutritional consulting, and body composition testing, that  
22 do not require the customer to engage in physical fitness activities  
23 to receive the service. The exclusion in this subsection (3)~~((g))~~  
24 (f)(ii)(C) does not apply to personal training services and  
25 instruction in a physical fitness activity;

26        (D) Separately stated charges for physical therapy provided by a  
27 physical therapist, as those terms are defined in RCW 18.74.010, or  
28 occupational therapy provided by an occupational therapy  
29 practitioner, as those terms are defined in RCW 18.59.020, when  
30 performed pursuant to a referral from an authorized health care  
31 practitioner or in consultation with an authorized health care  
32 practitioner. For the purposes of this subsection (3)~~((g))~~ (f)  
33 (ii)(D), an authorized health care practitioner means a health care  
34 practitioner licensed under chapter 18.83, 18.25, 18.36A, 18.57,  
35 18.57A, 18.71, or 18.71A RCW;

36        (E) Rent or association fees charged by a landlord or residential  
37 association to a tenant or residential owner with access to an  
38 athletic or fitness facility maintained by the landlord or  
39 residential association, unless the rent or fee varies depending on  
40 whether the tenant or owner has access to the facility;

1 (F) Services provided in the regular course of employment by an  
2 employee with access to an athletic or fitness facility maintained by  
3 the employer for use without charge by its employees or their family  
4 members;

5 (G) The provision of access to an athletic or fitness facility by  
6 an educational institution to its students and staff. However,  
7 charges made by an educational institution to its alumni or other  
8 members of the public for the use of any of the educational  
9 institution's athletic or fitness facilities are a retail sale under  
10 this subsection (3)((+g)) (f). For purposes of this subsection (3)  
11 ((+g)) (f)(ii)(G), "educational institution" has the same meaning as  
12 in RCW 82.04.170; and

13 (H) Yoga, tai chi, or chi gong classes held at a community  
14 center, park, gymnasium, college or university, hospital or other  
15 medical facility, private residence, or any facility that is not  
16 primarily used for physical fitness activities other than yoga, tai  
17 chi, or chi gong classes.

18 (iii) Nothing in ((+g)) (f)(ii) of this subsection (3) may be  
19 construed to affect the taxation of sales made by the operator of an  
20 athletic or fitness facility, where such sales are defined as a  
21 retail sale under any provision of this section other than this  
22 subsection (3).

23 (iv) For the purposes of this subsection (3)((+g)) (f), the  
24 following definitions apply:

25 (A) "Athletic or fitness facility" means an indoor or outdoor  
26 facility or portion of a facility that is primarily used for:  
27 Exercise classes; strength and conditioning programs; personal  
28 training services; tennis, racquetball, handball, squash, or  
29 pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or  
30 mixed martial arts training; or other activities requiring the use of  
31 exercise or strength training equipment, such as treadmills,  
32 elliptical machines, stair climbers, stationary cycles, rowing  
33 machines, pilates equipment, balls, climbing ropes, jump ropes, and  
34 weightlifting equipment.

35 (B) "Physical fitness activities" means activities that involve  
36 physical exertion for the purpose of improving or maintaining the  
37 general fitness, strength, flexibility, conditioning, or health of  
38 the participant.

39 (4)(a) The term also includes the renting or leasing of tangible  
40 personal property to consumers.

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

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

7 (6)(a) The term also includes the sale of prewritten computer  
8 software to a consumer, regardless of the method of delivery to the  
9 end user. For purposes of (a) and (b) of this subsection, the sale of  
10 prewritten computer software includes the sale of or charge made for  
11 a key or an enabling or activation code, where the key or code is  
12 required to activate prewritten computer software and put the  
13 software into use. There is no separate sale of the key or code from  
14 the prewritten computer software, regardless of how the sale may be  
15 characterized by the vendor or by the purchaser.

16 (b) The term "retail sale" does not include the sale of or charge  
17 made for:

18 (i) Custom software; or

19 (ii) The customization of prewritten computer software.

20 (c)(i) The term also includes the charge made to consumers for  
21 the right to access and use prewritten computer software, where  
22 possession of the software is maintained by the seller or a third  
23 party, regardless of whether the charge for the service is on a per  
24 use, per user, per license, subscription, or some other basis.

25 (ii)(A) The service described in (c)(i) of this subsection (6)  
26 includes the right to access and use prewritten computer software to  
27 perform data processing.

28 (B) For purposes of this subsection (6)(c)(ii), "data processing"  
29 means the systematic performance of operations on data to extract the  
30 required information in an appropriate form or to convert the data to  
31 usable information. Data processing includes check processing, image  
32 processing, form processing, survey processing, payroll processing,  
33 claim processing, and similar activities.

34 (7) The term also includes the sale of or charge made for an  
35 extended warranty to a consumer. For purposes of this subsection,  
36 "extended warranty" means an agreement for a specified duration to  
37 perform the replacement or repair of tangible personal property at no  
38 additional charge or a reduced charge for tangible personal property,  
39 labor, or both, or to provide indemnification for the replacement or  
40 repair of tangible personal property, based on the occurrence of



1 specified events. The term "extended warranty" does not include an  
2 agreement, otherwise meeting the definition of extended warranty in  
3 this subsection, if no separate charge is made for the agreement and  
4 the value of the agreement is included in the sales price of the  
5 tangible personal property covered by the agreement. For purposes of  
6 this subsection, "sales price" has the same meaning as in RCW  
7 82.08.010.

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

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

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

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

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

18 (b) A retail sale of digital goods, digital codes, or digital  
19 automated services under this subsection (8) includes any services  
20 provided by the seller exclusively in connection with the digital  
21 goods, digital codes, or digital automated services, whether or not a  
22 separate charge is made for such services.

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

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

35 (10) The term does not include the sale of or charge made for  
36 labor and services rendered in respect to the building, repairing, or  
37 improving of any street, place, road, highway, easement, right-of-  
38 way, mass public transportation terminal or parking facility, bridge,  
39 tunnel, or trestle which is owned by a municipal corporation or  
40 political subdivision of the state or by the United States and which

1 is used or to be used primarily for foot or vehicular traffic  
2 including mass transportation vehicles of any kind.

3 (11) The term also does not include sales of chemical sprays or  
4 washes to persons for the purpose of postharvest treatment of fruit  
5 for the prevention of scald, fungus, mold, or decay, nor does it  
6 include sales of feed, seed, seedlings, fertilizer, agents for  
7 enhanced pollination including insects such as bees, and spray  
8 materials to: (a) Persons who participate in the federal conservation  
9 reserve program, the environmental quality incentives program, the  
10 wetlands reserve program, and the wildlife habitat incentives  
11 program, or their successors administered by the United States  
12 department of agriculture; (b) farmers for the purpose of producing  
13 for sale any agricultural product; (c) farmers for the purpose of  
14 providing bee pollination services; and (d) farmers acting under  
15 cooperative habitat development or access contracts with an  
16 organization exempt from federal income tax under 26 U.S.C. Sec.  
17 501(c)(3) of the federal internal revenue code or the Washington  
18 state department of fish and wildlife to produce or improve wildlife  
19 habitat on land that the farmer owns or leases.

20 (12) The term does not include the sale of or charge made for  
21 labor and services rendered in respect to the constructing,  
22 repairing, decorating, or improving of new or existing buildings or  
23 other structures under, upon, or above real property of or for the  
24 United States, any instrumentality thereof, or a county or city  
25 housing authority created pursuant to chapter 35.82 RCW, including  
26 the installing, or attaching of any article of tangible personal  
27 property therein or thereto, whether or not such personal property  
28 becomes a part of the realty by virtue of installation. Nor does the  
29 term include the sale of services or charges made for the clearing of  
30 land and the moving of earth of or for the United States, any  
31 instrumentality thereof, or a county or city housing authority. Nor  
32 does the term include the sale of services or charges made for  
33 cleaning up for the United States, or its instrumentalities,  
34 radioactive waste and other by-products of weapons production and  
35 nuclear research and development.

36 (13) The term does not include the sale of or charge made for  
37 labor, services, or tangible personal property pursuant to agreements  
38 providing maintenance services for bus, rail, or rail fixed guideway  
39 equipment when a regional transit authority is the recipient of the

1 labor, services, or tangible personal property, and a transit agency,  
2 as defined in RCW 81.104.015, performs the labor or services.

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

6 (15)(a) The term "sale at retail" or "retail sale" includes  
7 amounts charged, however labeled, to consumers to engage in any of  
8 the activities listed in this subsection (15)(a), including the  
9 furnishing of any associated equipment or, except as otherwise  
10 provided in this subsection, providing instruction in such  
11 activities, where such charges are not otherwise defined as a "sale  
12 at retail" or "retail sale" in this section:

13 (i)(A) Golf, including any variant in which either golf balls or  
14 golf clubs are used, such as miniature golf, hitting golf balls at a  
15 driving range, and golf simulators, and including fees charged by a  
16 golf course to a player for using his or her own cart. However,  
17 charges for golf instruction are not a retail sale, provided that if  
18 the instruction involves the use of a golfing facility that would  
19 otherwise require the payment of a fee, such as green fees or driving  
20 range fees, such fees, including the applicable retail sales tax,  
21 must be separately identified and charged by the golfing facility  
22 operator to the instructor or the person receiving the instruction.

23 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except  
24 as otherwise provided in this subsection (15)(a)(i)(B), the term  
25 "sale at retail" or "retail sale" does not include amounts charged to  
26 participate in, or conduct, a golf tournament or other competitive  
27 event. However, amounts paid by event participants to the golf  
28 facility operator are retail sales under this subsection (15)(a)(i).  
29 Likewise, amounts paid by the event organizer to the golf facility  
30 are retail sales under this subsection (15)(a)(i), if such amounts  
31 vary based on the number of event participants;

32 (ii) Ballooning, hang gliding, indoor or outdoor sky diving,  
33 paragliding, parasailing, and similar activities;

34 (iii) Air hockey, billiards, pool, foosball, darts, shuffleboard,  
35 ping pong, and similar games;

36 (iv) Access to amusement park, theme park, and water park  
37 facilities, including but not limited to charges for admission and  
38 locker or cabana rentals. Discrete charges for rides or other  
39 attractions or entertainment that are in addition to the charge for  
40 admission are not a retail sale under this subsection (15)(a)(iv).

1 For the purposes of this subsection, an amusement park or theme park  
2 is a location that provides permanently affixed amusement rides,  
3 games, and other entertainment, but does not include parks or zoos  
4 for which the primary purpose is the exhibition of wildlife, or  
5 fairs, carnivals, and festivals as defined in (b)(i) of this  
6 subsection;

7 (v) Batting cage activities;

8 (vi) Bowling, but not including competitive events, except that  
9 amounts paid by the event participants to the bowling alley operator  
10 are retail sales under this subsection (15)(a)(vi). Likewise, amounts  
11 paid by the event organizer to the operator of the bowling alley are  
12 retail sales under this subsection (15)(a)(vi), if such amounts vary  
13 based on the number of event participants;

14 (vii) Climbing on artificial climbing structures, whether indoors  
15 or outdoors;

16 (viii) Day trips for sightseeing purposes;

17 (ix) Bungee jumping, zip lining, and riding inside a ball,  
18 whether inflatable or otherwise;

19 (x) Horseback riding offered to the public, where the seller  
20 furnishes the horse to the buyer and providing instruction is not the  
21 primary focus of the activity, including guided rides, but not  
22 including therapeutic horseback riding provided by an instructor  
23 certified by a nonprofit organization that offers national or  
24 international certification for therapeutic riding instructors;

25 (xi) Fishing, including providing access to private fishing areas  
26 and charter or guided fishing, except that fishing contests and  
27 license fees imposed by a government entity are not a retail sale  
28 under this subsection;

29 (xii) Guided hunting and hunting at game farms and shooting  
30 preserves, except that hunting contests and license fees imposed by a  
31 government entity are not a retail sale under this subsection;

32 (xiii) Swimming, but only in respect to (A) recreational or  
33 fitness swimming that is open to the public, such as open swim, lap  
34 swimming, and special events like kids night out and pool parties  
35 during open swim time, and (B) pool parties for private events, such  
36 as birthdays, family gatherings, and employee outings. Fees for  
37 swimming lessons, to participate in swim meets and other  
38 competitions, or to join a swim team, club, or aquatic facility are  
39 not retail sales under this subsection (15)(a)(xiii);

1 (xiv) Go-karting, bumper cars, and other motorized activities  
2 where the seller provides the vehicle and the premises where the  
3 buyer will operate the vehicle;

4 (xv) Indoor or outdoor playground activities, such as inflatable  
5 bounce structures and other inflatables; mazes; trampolines; slides;  
6 ball pits; games of tag, including laser tag and soft-dart tag; and  
7 human gyroscope rides, regardless of whether such activities occur at  
8 the seller's place of business, but not including playground  
9 activities provided for children by a licensed child day care center  
10 or licensed family day care provider as those terms are defined in  
11 RCW 43.215.010;

12 (xvi) Shooting sports and activities, such as target shooting,  
13 skeet, trap, sporting clays, "5" stand, and archery, but only in  
14 respect to discrete charges to members of the public to engage in  
15 these activities, but not including fees to enter a competitive  
16 event, instruction that is entirely or predominately classroom based,  
17 or to join or renew a membership at a club, range, or other facility;

18 (xvii) Paintball and airsoft activities;

19 (xviii) Skating, including ice skating, roller skating, and  
20 inline skating, but only in respect to discrete charges to members of  
21 the public to engage in skating activities, but not including skating  
22 lessons, competitive events, team activities, or fees to join or  
23 renew a membership at a skating facility, club, or other  
24 organization;

25 (xix) Nonmotorized snow sports and activities, such as downhill  
26 and cross-country skiing, snowboarding, ski jumping, sledding, snow  
27 tubing, snowshoeing, and similar snow sports and activities, whether  
28 engaged in outdoors or in an indoor facility with or without snow,  
29 but only in respect to discrete charges to the public for the use of  
30 land or facilities to engage in nonmotorized snow sports and  
31 activities, such as fees, however labeled, for the use of ski lifts  
32 and tows and daily or season passes for access to trails or other  
33 areas where nonmotorized snow sports and activities are conducted.  
34 However, fees for the following are not retail sales under this  
35 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits  
36 issued by a governmental entity to park a vehicle on or access public  
37 lands; and (C) permits or leases granted by an owner of private  
38 timberland for recreational access to areas used primarily for  
39 growing and harvesting timber; and

1 (xx) Scuba diving; snorkeling; river rafting; surfing;  
2 kiteboarding; flyboarding; water slides; inflatables, such as water  
3 pillows, water trampolines, and water rollers; and similar water  
4 sports and activities.

5 (b) Notwithstanding anything to the contrary in this subsection  
6 (15), the term "sale at retail" or "retail sale" does not include  
7 charges:

8 (i) Made for admission to, and rides or attractions at, fairs,  
9 carnivals, and festivals. For the purposes of this subsection, fairs,  
10 carnivals, and festivals are events that do not exceed twenty-one  
11 days and a majority of the amusement rides, if any, are not affixed  
12 to real property;

13 (ii) Made by an educational institution to its students and staff  
14 for activities defined as retail sales by (a)(i) through (xx) of this  
15 subsection. However, charges made by an educational institution to  
16 its alumni or other members of the general public for these  
17 activities are a retail sale under this subsection (15). For purposes  
18 of this subsection (15)(b)(ii), "educational institution" has the  
19 same meaning as in RCW 82.04.170;

20 (iii) Made by a vocational school for commercial diver training  
21 that is licensed by the workforce training and education coordinating  
22 board under chapter 28C.10 RCW; or

23 (iv) Made for day camps offered by a nonprofit organization or  
24 state or local governmental entity that provide youth not older than  
25 age eighteen, or that are focused on providing individuals with  
26 disabilities or mental illness, the opportunity to participate in a  
27 variety of supervised activities.

28 **Sec. 4.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each  
29 amended to read as follows:

30 "Engaging within this state" and "engaging within the state,"  
31 when used in connection with any apportionable activity as defined in  
32 RCW 82.04.460 or wholesale sales taxable under RCW 82.04.257(1) or  
33 82.04.270, means that a person generates gross income of the business  
34 from sources within this state or personal information, as defined in  
35 section 2 of this act, of individuals located in this state, such as  
36 customers or intangible property located in this state, regardless of  
37 whether the person is physically present in this state. For the  
38 purposes of this section, an individual is located in this state if

1 the internet provider address utilized by that individual is located  
2 in this state.

3 **Sec. 5.** RCW 82.04.192 and 2010 c 111 s 203 are each amended to  
4 read as follows:

5 (1) "Digital audio works" means works that result from the  
6 fixation of a series of musical, spoken, or other sounds, including  
7 ringtones.

8 (2) "Digital audiovisual works" means a series of related images  
9 which, when shown in succession, impart an impression of motion,  
10 together with accompanying sounds, if any.

11 (3)(a) "Digital automated service," except as provided in (b) of  
12 this subsection (3), means any service transferred electronically  
13 that uses one or more software applications.

14 (b) "Digital automated service" does not include:

15 (i) Any service that primarily involves the application of human  
16 effort by the seller, and the human effort originated after the  
17 customer requested the service;

18 (ii) The loaning or transferring of money or the purchase, sale,  
19 or transfer of financial instruments. For purposes of this subsection  
20 (3)(b)(ii), "financial instruments" include cash, accounts receivable  
21 and payable, loans and notes receivable and payable, debt securities,  
22 equity securities, as well as derivative contracts such as forward  
23 contracts, swap contracts, and options;

24 (iii) Dispensing cash or other physical items from a machine;

25 (iv) Payment processing services;

26 (v) Parimutuel wagering and handicapping contests as authorized  
27 by chapter 67.16 RCW;

28 (vi) Telecommunications services and ancillary services as those  
29 terms are defined in RCW 82.04.065;

30 (vii) The internet and internet access as those terms are defined  
31 in RCW 82.04.297;

32 (viii) The service described in RCW 82.04.050(6)((~~b~~)) (c);

33 (ix) Online educational programs provided by a:

34 (A) Public or private elementary or secondary school; or

35 (B) An institution of higher education as defined in sections  
36 1001 or 1002 of the federal higher education act of 1965 (Title 20  
37 U.S.C. Secs. 1001 and 1002), as existing on July 1, 2009. For  
38 purposes of this subsection (3)(b)(ix)(B), an online educational  
39 program must be encompassed within the institution's accreditation;

1 (x) Live presentations, such as lectures, seminars, workshops, or  
2 courses, where participants are connected to other participants via  
3 the internet or telecommunications equipment, which allows audience  
4 members and the presenter or instructor to give, receive, and discuss  
5 information with each other in real time;

6 (xi) Travel agent services, including online travel services, and  
7 automated systems used by travel agents to book reservations;

8 (xii)(A) A service that allows the person receiving the service  
9 to make online sales of products or services, digital or otherwise,  
10 using either: (I) The service provider's web site; or (II) the  
11 service recipient's web site, but only when the service provider's  
12 technology is used in creating or hosting the service recipient's web  
13 site or is used in processing orders from customers using the service  
14 recipient's web site.

15 (B) The service described in this subsection (3)(b)(xii) does not  
16 include the underlying sale of the products or services, digital or  
17 otherwise, by the person receiving the service;

18 (xiii) Advertising services. For purposes of this subsection  
19 (3)(b)(xiii), "advertising services" means all services directly  
20 related to the creation, preparation, production, or the  
21 dissemination of advertisements. Advertising services include layout,  
22 art direction, graphic design, mechanical preparation, production  
23 supervision, placement, and rendering advice to a client concerning  
24 the best methods of advertising that client's products or services.  
25 Advertising services also include online referrals, search engine  
26 marketing and lead generation optimization, web campaign planning,  
27 the acquisition of advertising space in the internet media, and the  
28 monitoring and evaluation of web site traffic for purposes of  
29 determining the effectiveness of an advertising campaign. Advertising  
30 services do not include web hosting services and domain name  
31 registration;

32 (xiv) The mere storage of digital products, digital codes,  
33 computer software, or master copies of software. This exclusion from  
34 the definition of digital automated services includes providing space  
35 on a server for web hosting or the backing up of data or other  
36 information;

37 (xv) Data processing services. For purposes of this subsection  
38 (3)(b)(xv), "data processing service" means a primarily automated  
39 service provided to a business or other organization where the  
40 primary object of the service is the systematic performance of



1 operations by the service provider on data supplied in whole or in  
2 part by the customer to extract the required information in an  
3 appropriate form or to convert the data to usable information. Data  
4 processing services include check processing, image processing, form  
5 processing, survey processing, payroll processing, claim processing,  
6 and similar activities. Data processing does not include the service  
7 described in RCW 82.04.050(6)((~~b~~)) (c); (~~and~~)

8 (xvi) Any business activity taxable under section 2 of this act;  
9 and

10 (xvii) Digital goods.

11 (4) "Digital books" means works that are generally recognized in  
12 the ordinary and usual sense as books.

13 (5) "Digital code" means a code that provides a purchaser with  
14 the right to obtain one or more digital products, if all of the  
15 digital products to be obtained through the use of the code have the  
16 same sales and use tax treatment. "Digital code" does not include a  
17 code that represents a stored monetary value that is deducted from a  
18 total as it is used by the purchaser. "Digital code" also does not  
19 include a code that represents a redeemable card, gift card, or gift  
20 certificate that entitles the holder to select digital products of an  
21 indicated cash value. A digital code may be obtained by any means,  
22 including email or by tangible means regardless of its designation as  
23 song code, video code, book code, or some other term.

24 (6)(a) "Digital goods," except as provided in (b) of this  
25 subsection (6), means sounds, images, data, facts, or information, or  
26 any combination thereof, transferred electronically, including, but  
27 not limited to, specified digital products and other products  
28 transferred electronically not included within the definition of  
29 specified digital products.

30 (b) The term "digital goods" does not include:

31 (i) Telecommunications services and ancillary services as those  
32 terms are defined in RCW 82.04.065;

33 (ii) Computer software as defined in RCW 82.04.215;

34 (iii) The internet and internet access as those terms are defined  
35 in RCW 82.04.297;

36 (iv)(A) Except as provided in (b)(iv)(B) of this subsection (6),  
37 the representation of a personal or professional service in  
38 electronic form, such as an electronic copy of an engineering report  
39 prepared by an engineer, where the service primarily involves the

1 application of human effort by the service provider, and the human  
2 effort originated after the customer requested the service.

3 (B) The exclusion in (b)(iv)(A) of this subsection (6) does not  
4 apply to photographers in respect to amounts received for the taking  
5 of photographs that are transferred electronically to the customer,  
6 but only if the customer is an end user, as defined in RCW  
7 82.04.190(11), of the photographs. Such amounts are considered to be  
8 for the sale of digital goods; (~~and~~)

9 (v) Personal information as defined in section 2 of this act; and  
10 (vi) Services and activities excluded from the definition of  
11 digital automated services in subsection (3)(b)(i) through (~~(xv)~~)  
12 (xvi) of this section and not otherwise described in (b)(i) through  
13 (~~(iv)~~) (v) of this subsection (6).

14 (7) "Digital products" means digital goods and digital automated  
15 services.

16 (8) "Electronically transferred" or "transferred electronically"  
17 means obtained by the purchaser by means other than tangible storage  
18 media. It is not necessary that a copy of the product be physically  
19 transferred to the purchaser. So long as the purchaser may access the  
20 product, it will be considered to have been electronically  
21 transferred to the purchaser.

22 (9) "Specified digital products" means electronically transferred  
23 digital audiovisual works, digital audio works, and digital books.

24 (10) "Subscription radio services" means the sale of audio  
25 programming by a radio broadcaster as defined in RCW 82.08.02081,  
26 except as otherwise provided in this subsection. "Subscription radio  
27 services" does not include audio programming that is sold on a pay-  
28 per-program basis or that allows the buyer to access a library of  
29 programs at any time for a specific charge for that service.

30 (11) "Subscription television services" means the sale of video  
31 programming by a television broadcaster as defined in RCW  
32 82.08.02081, except as otherwise provided in this subsection.  
33 "Subscription television services" does not include video programming  
34 that is sold on a pay-per-program basis or that allows the buyer to  
35 access a library of programs at any time for a specific charge for  
36 that service, but only if the seller is not subject to a franchise  
37 fee in this state under the authority of Title 47 U.S.C. Sec. 542(a)  
38 on the gross revenue derived from the sale.

1       **Sec. 6.** RCW 82.04.2907 and 2015 3rd sp.s. c 5 s 101 are each  
2 amended to read as follows:

3       (1) Upon every person engaging within this state in the business  
4 of receiving income from royalties, the amount of tax with respect to  
5 the business is equal to the gross income from royalties multiplied  
6 by the rate provided in RCW 82.04.290(2)(a).

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

19       **Sec. 7.** RCW 82.04.460 and 2014 c 97 s 304 are each amended to  
20 read as follows:

21       (1) Except as otherwise provided in this section, any person  
22 earning apportionable income taxable under this chapter and also  
23 taxable in another state must, for the purpose of computing tax  
24 liability under this chapter, apportion to this state, in accordance  
25 with RCW 82.04.462, that portion of the person's apportionable income  
26 derived from business activities performed within this state.

27       (2) The department must by rule provide a method of apportioning  
28 the apportionable income of financial institutions, where such  
29 apportionable income is taxable under RCW 82.04.290. The rule adopted  
30 by the department must, to the extent feasible, be consistent with  
31 the multistate tax commission's recommended formula for the  
32 apportionment and allocation of net income of financial institutions  
33 as existing on June 1, 2010, or such subsequent date as may be  
34 provided by the department by rule, consistent with the purposes of  
35 this section, except that:

36       (a) The department's rule must provide for a single factor  
37 apportionment method based on the receipts factor; and

38       (b) The definition of "financial institution" contained in  
39 appendix A to the multistate tax commission's recommended formula for

1 the apportionment and allocation of net income of financial  
2 institutions is advisory only.

3 (3) The department may by rule provide a method or methods of  
4 apportioning or allocating gross income derived from sales of  
5 telecommunications service and competitive telephone service taxed  
6 under this chapter, if the gross proceeds of sales subject to tax  
7 under this chapter do not fairly represent the extent of the  
8 taxpayer's income attributable to this state. The rule must provide  
9 for an equitable and constitutionally permissible division of the tax  
10 base.

11 (4) For purposes of this section, the following definitions apply  
12 unless the context clearly requires otherwise:

13 (a) "Apportionable income" means gross income of the business  
14 generated from engaging in apportionable activities, including income  
15 received from apportionable activities performed outside this state  
16 if the income would be taxable under this chapter if received from  
17 activities in this state, less the exemptions and deductions  
18 allowable under this chapter. For purposes of this subsection,  
19 "apportionable activities" means only those activities taxed under:

20 (i) RCW 82.04.255;

21 (ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);

22 (iii) RCW 82.04.280(1)(e);

23 (iv) RCW 82.04.285;

24 (v) RCW 82.04.286;

25 (vi) RCW 82.04.290;

26 (vii) RCW 82.04.2907;

27 (viii) RCW 82.04.2908;

28 (ix) RCW 82.04.263, but only to the extent of any activity that  
29 would be taxable under any of the provisions enumerated under (a)(i)  
30 through (viii) of this subsection (4) if the tax classification in  
31 RCW 82.04.263 did not exist; (~~and~~)

32 (x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect  
33 to advertising; and

34 (xi) Section 2 of this act.

35 (b)(i) "Taxable in another state" means that the taxpayer is  
36 subject to a business activities tax by another state on its income  
37 received from engaging in apportionable activities; or the taxpayer  
38 is not subject to a business activities tax by another state on its  
39 income received from engaging in apportionable activities, but any  
40 other state has jurisdiction to subject the taxpayer to a business

1 activities tax on such income under the substantial nexus standards  
2 in RCW 82.04.067(1).

3 (ii) For purposes of this subsection (4)(b), "business activities  
4 tax" and "state" have the same meaning as in RCW 82.04.462.

5 **Sec. 8.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to  
6 read as follows:

7 (1) The apportionable income of a person within the scope of RCW  
8 82.04.460(1) is apportioned to Washington by multiplying its  
9 apportionable income by the receipts factor. Persons who are subject  
10 to tax under more than one of the tax classifications enumerated in  
11 RCW 82.04.460(4)(a) (i) through ~~((x))~~ (xi) must calculate a  
12 separate receipts factor for each tax classification that the person  
13 is taxable under.

14 (2) For purposes of subsection (1) of this section, the receipts  
15 factor is a fraction and is calculated as provided in subsections (3)  
16 ~~((and))~~, (4), and (5) of this section and, for financial  
17 institutions, as provided in the rule adopted by the department under  
18 the authority of RCW 82.04.460(2).

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

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

28 (i) Where the customer received the benefit of the taxpayer's  
29 service or, in the case of gross income from royalties, where the  
30 customer used the taxpayer's intangible property. When a customer  
31 receives the benefit of the taxpayer's services or uses the  
32 taxpayer's intangible property in this and one or more other states  
33 and the amount of gross income of the business that was received by  
34 the taxpayer in return for the services received or intangible  
35 property used by the customer in this state can be reasonably  
36 determined by the taxpayer, such amount of gross income must be  
37 attributed to this state.

38 (ii) If the customer received the benefit of the service or used  
39 the intangible property in more than one state and if the taxpayer is

1 unable to attribute gross income of the business under the provisions  
2 of (b)(i) of this subsection (3), gross income of the business must  
3 be attributed to the state in which the benefit of the service was  
4 primarily received or in which the intangible property was primarily  
5 used.

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

12 (iv) If the taxpayer is unable to attribute gross income of the  
13 business under the provisions of (b)(i), (ii), or (iii) of this  
14 subsection (3), gross income of the business must be attributed to  
15 the state to which the billing statements or invoices are sent to the  
16 customer by the taxpayer.

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

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

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

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

1 (c) Gross income of the business from engaging in an  
2 apportionable activity must be excluded from the denominator of the  
3 receipts factor if, in respect to such activity, at least some of the  
4 activity is performed in this state, and the gross income is  
5 attributable under (b) of this subsection (3) to a state in which the  
6 taxpayer is not taxable. For purposes of this subsection (3)(c), "not  
7 taxable" means that the taxpayer is not subject to a business  
8 activities tax by that state, except that a taxpayer is taxable in a  
9 state in which it would be deemed to have a substantial nexus with  
10 that state under the standards in RCW 82.04.067(1) regardless of  
11 whether that state imposes such a tax. "Business activities tax"  
12 means a tax measured by the amount of, or economic results of,  
13 business activity conducted in a state. The term includes taxes  
14 measured in whole or in part on net income or gross income or  
15 receipts. "Business activities tax" does not include a sales tax, use  
16 tax, or a similar transaction tax, imposed on the sale or acquisition  
17 of goods or services, whether or not denominated a gross receipts tax  
18 or a tax imposed on the privilege of doing business.

19 (d) This subsection (3) does not apply to financial institutions  
20 with respect to apportionable income taxable under RCW 82.04.290.  
21 Financial institutions must calculate the receipts factor as provided  
22 in subsection (4) of this section and the rule adopted by the  
23 department under the authority of RCW 82.04.460(2) with respect to  
24 apportionable income taxable under RCW 82.04.290. Financial  
25 institutions that are subject to tax under any other tax  
26 classification enumerated in RCW 82.04.460(4)(a) (i) through (v) and  
27 (vii) through (~~(x)~~) (xi) must calculate a separate receipts factor,  
28 as provided in this section, for each of the other tax  
29 classifications that the financial institution is taxable under.

30 (4) A taxpayer may calculate the receipts factor for the current  
31 tax year based on the most recent calendar year for which information  
32 is available for the full calendar year. If a taxpayer does not  
33 calculate the receipts factor for the current tax year based on  
34 previous calendar year information as authorized in this subsection,  
35 the business must use current year information to calculate the  
36 receipts factor for the current tax year. In either case, a taxpayer  
37 must correct the reporting for the current tax year when complete  
38 information is available to calculate the receipts factor for that  
39 year, but not later than October 31st of the following tax year.  
40 Interest will apply to any additional tax due on a corrected tax

1 return. Interest must be computed and assessed as provided in RCW  
2 82.32.050 and accrues until the additional taxes are paid. Penalties  
3 as provided in RCW 82.32.090 will apply to any such additional tax  
4 due only if the current tax year reporting is not corrected and the  
5 additional tax is not paid by October 31st of the following tax year.  
6 Interest as provided in RCW 82.32.060 will apply to any tax paid in  
7 excess of that properly due on a return as a result of a taxpayer  
8 using previous calendar year data or incomplete current-year data to  
9 calculate the receipts factor.

10 (5)(a)(i) Except as provided in (a)(ii) of this subsection (5),  
11 for purposes of computing the receipts factor under subsection (3) of  
12 this section, gross income of the business generating sales of, or  
13 exchanging for consideration, personal information must be  
14 attributable to this state in the ratio, expressed as a percentage,  
15 that the number of Washington addresses in the personal information  
16 bears to all addresses in the personal information. Only personal  
17 information used to generate the gross income of the business to be  
18 attributed under this subsection (5)(a)(i) is applicable in  
19 calculating the ratio described in this subsection (5)(a)(i).

20 (ii) If the taxpayer is unable to attribute gross income of the  
21 business under the provisions of (a)(i) of this subsection (5), gross  
22 income of the business generated from making sales of, or exchanging  
23 for consideration, personal information must be attributed to this  
24 state in the ratio, expressed as percentage, that the population of  
25 all the states of the United States in the taxpayer's market, or by  
26 any other reasonable methods of attribution allowed by the  
27 department.

28 (b) For the purposes of this subsection:

29 (i) "Addresses" means both physical and internet provider  
30 addresses; and

31 (ii) "Personal information" has the same meaning as provided in  
32 section 2 of this act.

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

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

37 (b) "State" means a state of the United States, the District of  
38 Columbia, the Commonwealth of Puerto Rico, any territory or  
39 possession of the United States, or any foreign country or political  
40 subdivision of a foreign country.



1       **Sec. 9.** RCW 82.08.0291 and 2015 c 169 s 4 are each amended to  
2 read as follows:

3       The tax imposed by RCW 82.08.020 does not apply to sales defined  
4 as a sale at retail and retail sale under RCW 82.04.050 (3)((+g))  
5 (f) or (15), by a nonprofit youth organization, as defined in RCW  
6 82.04.4271, to members of the organization; and the tax does not  
7 apply to physical fitness classes provided by a local government.

8       **Sec. 10.** RCW 82.32.087 and 2015 c 169 s 11 are each amended to  
9 read as follows:

10       (1) The director may grant a direct pay permit to a taxpayer who  
11 demonstrates, to the satisfaction of the director, that the taxpayer  
12 meets the requirements of this section. The direct pay permit allows  
13 the taxpayer to accrue and remit directly to the department use tax  
14 on the acquisition of tangible personal property or sales tax on the  
15 sale of or charges made for labor and/or services, in accordance with  
16 all of the applicable provisions of this title. Any taxpayer that  
17 uses a direct pay permit must remit state and local sales or use tax  
18 directly to the department. The agreement by the purchaser to remit  
19 tax directly to the department, rather than pay sales or use tax to  
20 the seller, relieves the seller of the obligation to collect sales or  
21 use tax and requires the buyer to pay use tax on the tangible  
22 personal property and sales tax on the sale of or charges made for  
23 labor and/or services.

24       (2)(a) A taxpayer may apply for a permit under this section if:  
25 (i) The taxpayer's cumulative tax liability is reasonably expected to  
26 be two hundred forty thousand dollars or more in the current calendar  
27 year; or (ii) the taxpayer makes purchases subject to the taxes  
28 imposed under chapter 82.08 or 82.12 RCW in excess of ten million  
29 dollars per calendar year. For the purposes of this section, "tax  
30 liability" means the amount required to be remitted to the department  
31 for taxes administered under this chapter, except for the taxes  
32 imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27,  
33 82.29A, and 84.33 RCW.

34       (b) Application for a permit must be made in writing to the  
35 director in a form and manner prescribed by the department. A  
36 taxpayer who transacts business in two or more locations may submit  
37 one application to cover the multiple locations.

38       (c) The director must review a direct pay permit application in a  
39 timely manner and must notify the applicant, in writing, of the

1 approval or denial of the application. The department must approve or  
2 deny an application based on the applicant's ability to comply with  
3 local government use tax coding capabilities and responsibilities;  
4 requirements for vendor notification; recordkeeping obligations;  
5 electronic data capabilities; and tax reporting procedures.  
6 Additionally, an application may be denied if the director determines  
7 that denial would be in the best interest of collecting taxes due  
8 under this title. The department must provide a direct pay permit to  
9 an approved applicant with the notice of approval. The direct pay  
10 permit must clearly state that the holder is solely responsible for  
11 the accrual and payment of the tax imposed under chapters 82.08 and  
12 82.12 RCW and that the seller is relieved of liability to collect tax  
13 imposed under chapters 82.08 and 82.12 RCW on all sales to the direct  
14 pay permit holder. The taxpayer may petition the director for  
15 reconsideration of a denial.

16 (d) A taxpayer who uses a direct pay permit must continue to  
17 maintain records that are necessary to a determination of the tax  
18 liability in accordance with this title. A direct pay permit is not  
19 transferable and the use of a direct pay permit may not be assigned  
20 to a third party.

21 (3) Taxes for which the direct pay permit is used are due and  
22 payable on the tax return for the reporting period in which the  
23 taxpayer (a) receives the tangible personal property purchased or in  
24 which the labor and/or services are performed or (b) receives an  
25 invoice for such property or such labor and/or services, whichever  
26 period is earlier.

27 (4) The holder of a direct pay permit must furnish a copy of the  
28 direct pay permit to each vendor with whom the taxpayer has opted to  
29 use a direct pay permit. Sellers who make sales upon which the sales  
30 or use tax is not collected by reason of the provisions of this  
31 section, in addition to existing requirements under this title, must  
32 maintain a copy of the direct pay permit and any such records or  
33 information as the department may specify.

34 (5) A direct pay permit is subject to revocation by the director  
35 at any time the department determines that the taxpayer has violated  
36 any provision of this section or that revocation would be in the best  
37 interests of collecting the taxes due under this title. The notice of  
38 revocation must be in writing and is effective either as of the end  
39 of the taxpayer's next normal reporting period or a date deemed  
40 appropriate by the director and identified in the revocation notice.

1 The taxpayer may petition the director for reconsideration of a  
2 revocation and reinstatement of the permit.

3 (6) Any taxpayer who chooses to no longer use a direct pay permit  
4 or whose permit is revoked by the department, must return the permit  
5 to the department and immediately make a good faith effort to notify  
6 all vendors to whom the permit was given, advising them that the  
7 permit is no longer valid.

8 (7) Except as provided in this subsection, the direct pay permit  
9 may be used for any purchase of tangible personal property and any  
10 retail sale under RCW 82.04.050. The direct pay permit may not be  
11 used for:

12 (a) Purchases of meals or beverages;

13 (b) Purchases of motor vehicles, trailers, boats, airplanes, and  
14 other property subject to requirements for title transactions by the  
15 department of licensing;

16 (c) Purchases for which a reseller permit or other documentation  
17 authorized under RCW 82.04.470 may be used;

18 (d) Purchases that meet the definitions of RCW 82.04.050 (2) (e)  
19 and (f), (3) (a) (~~through (c), (e), (f), and (g))~~), (b), and (d)  
20 through (f), (5) and (15); or

21 (e) Other activities subject to tax under chapter 82.08 or 82.12  
22 RCW that the department by rule designates, consistent with the  
23 purposes of this section, as activities for which a direct pay permit  
24 is not appropriate and may not be used.

25 NEW SECTION. **Sec. 11.** If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 12.** This act takes effect January 1, 2018.

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