



1 (2) The legislature recognizes that states may not impose sales  
2 or use tax collection obligations on an out-of-state business unless  
3 the business has a substantial nexus with the taxing state. The  
4 legislature also recognizes that under the United States supreme  
5 court's decision in *National Bellas Hess v. Dep't of Revenue of Ill.*,  
6 386 U.S. 753 (1967), substantial nexus under the commerce clause  
7 requires a physical presence by the seller in the taxing state.  
8 Relying on the doctrine of stare decisis, the United States supreme  
9 court reaffirmed the physical presence nexus standard twenty-five  
10 years later in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

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

27 (4) The legislature further finds that *Bellas Hess* was decided  
28 one year before the first plans were developed for the computer  
29 network that became the basis of the internet. The legislature  
30 further finds that since *Quill* was decided e-commerce has grown  
31 substantially, generating retail sales of over three hundred forty-  
32 one billion dollars in 2015, which have been growing at a rate of  
33 about fifteen percent for the last five years. The legislature  
34 further finds that like their brick and mortar competitors, online  
35 businesses receive benefits and opportunities provided by their  
36 market states, such as transportation networks, infrastructure, laws  
37 providing protection of business interests, access to the courts to  
38 protect valuable rights, and a regulated marketplace. However, the  
39 legislature finds that under the current physical presence nexus  
40 standard, online only sellers have an unfair competitive advantage

1 over in state brick and mortar stores to the detriment of main street  
2 retailers. Online only businesses have no geographical limitations to  
3 their marketplace; no costs of maintaining local physical retail  
4 stores, such as infrastructure costs, employee costs, and property  
5 taxes; and may not have to collect sales tax on sales to customers in  
6 states in which they do not have a physical presence, all of which  
7 lead to their ability to price their goods at a lower cost to  
8 consumers. The legislature further finds that even if the physical  
9 presence nexus standard was once a wise rule of law, it is no longer  
10 justifiable.

11 (5) The legislature further finds that the supreme court in its  
12 *Quill* decision implicitly invited the United States congress to  
13 resolve whether and to what extent states may impose a sales tax  
14 collection obligation on remote sellers. The legislature further  
15 finds that there is overwhelming support among the public, states,  
16 and municipalities, and many national and local associations  
17 representing brick and mortar businesses for federal legislation  
18 requiring remote sellers to collect and remit retail sales tax. The  
19 legislature further finds that despite such broad-based support,  
20 congress has failed to enact such legislation.

21 (6) The legislature agrees with Justice Kennedy's concurring  
22 opinion in the *Direct Marketing Association v. Brohl* decision (135 S.  
23 Ct. 1124) that the court's *Quill* holding is "inflicting extreme harm  
24 and unfairness on the States," and that "[t]here is a powerful case  
25 to be made that a retailer doing extensive business within a State  
26 has a sufficiently 'substantial nexus' to justify imposing some minor  
27 tax-collection duty, even if that business is done through mail or  
28 the Internet." Justice Kennedy stated that "it is unwise to delay any  
29 longer a reconsideration of the Court's holding in *Quill*," and he  
30 closed his opinion by inviting a direct challenge to *Quill* and *Bellas*  
31 *Hess*, saying that "[t]he legal system should find an appropriate case  
32 for this Court to reexamine *Quill* and *Bellas Hess*."

33 (7) The legislature finds that because Washington is unique in  
34 that it relies so heavily on sales tax to fund education and other  
35 vital state services, and because Washington has frequently been at  
36 the forefront of advancing technology and tax policy, it is incumbent  
37 upon this state to lead the way to a more fair and equitable modern  
38 marketplace where online businesses and brick and mortar businesses  
39 can compete based on quality of products and other nontax factors,  
40 which benefits all consumers. The legislature recognizes that the

1 fast pace of technological change seen with the rapid growth of  
2 electronic commerce puts pressure on states to update their tax codes  
3 just as this state did (a) in 2007 in adopting Senate Bill No. 5089,  
4 which enacted significant simplifications in sales and use  
5 administration and brought Washington into full compliance with the  
6 streamlined sales and use tax agreement, (b) in 2009 in adopting  
7 Engrossed Substitute House Bill No. 2075 addressing the excise  
8 taxation of digital products, and (c) in 2010 in adopting economic  
9 nexus and market-based apportionment for business and occupation tax  
10 purposes in Second Engrossed Substitute Senate Bill No. 6143. The  
11 legislature finds that making such changes is not radical or to be  
12 unexpected, but is a rational means to avoid an ever shrinking tax  
13 base resulting from an outdated tax code that has not kept up with  
14 significant changes in technology and the economy.

15 (8) The legislature finds that several states, including Alabama,  
16 South Dakota, and Tennessee have taken measures to adopt an "economic  
17 nexus" standard with respect to the collection of sales tax. The  
18 legislature further finds that other states are considering adopting  
19 similar rules or legislation.

20 (9) The legislature also finds that Colorado adopted a law  
21 requiring out-of-state retailers that do not collect Colorado's sales  
22 tax to report tax-related information to their Colorado customers and  
23 the Colorado department of revenue. The legislature further finds  
24 that in 2016 the United States court of appeals for the tenth circuit  
25 upheld that law.

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

1 economic nexus standard for the business and occupation tax imposed  
2 on retail sales taxed under RCW 82.04.250(1) and 82.04.257(1). Part  
3 III of this act adopts a sales and use tax notice and reporting law  
4 based on the multistate tax commission's draft model sales and use  
5 tax notice reporting statute, which is similar to Colorado's sales  
6 and use tax notice reporting law.

7 (11) The legislature recognizes that the enactment of part II of  
8 this act places remote sellers in a complicated position, precisely  
9 because existing constitutional doctrine calls certain provisions of  
10 part II of this act into question. Accordingly, the legislature  
11 intends to clarify that the obligations created by this law on  
12 sellers with a substantial nexus with this state under section  
13 206(1)(b) of this act would be appropriately stayed by the courts  
14 until the constitutionality of section 206(1)(b) of this act has been  
15 clearly established by a binding judgment, including, for example, a  
16 decision from the supreme court of the United States abrogating its  
17 existing doctrine, or a final judgment applicable to a particular  
18 taxpayer.

19 (12) The legislature finds that the declaratory judgment action  
20 authorized in section 211 of this act is warranted by existing law,  
21 by good faith arguments for the extension, modification, or reversal  
22 of existing law, or the establishment of new law.

## 23 Part II

### 24 Nexus for Excise Tax Purposes

25 **Sec. 201.** RCW 82.04.066 and 2015 3rd sp.s. c 5 s 203 are each  
26 amended to read as follows:

27 "Engaging within this state" and "engaging within the state,"  
28 when used in connection with any apportionable activity as defined in  
29 RCW 82.04.460 or (~~wholesale sales~~) selling activity taxable under  
30 RCW 82.04.250(1), 82.04.257(1), or 82.04.270, means that a person  
31 generates gross income of the business from sources within this  
32 state, such as customers or intangible property located in this  
33 state, regardless of whether the person is physically present in this  
34 state.

35 **Sec. 202.** RCW 82.04.067 and 2016 c 137 s 2 are each amended to  
36 read as follows:

1 (1) A person engaging in business is deemed to have substantial  
2 nexus with this state if, in the current or immediately preceding  
3 calendar year, the person is:

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

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

7 (c) A nonresident individual or a business entity that is  
8 organized or commercially domiciled outside this state, and (~~in the~~  
9 ~~immediately preceding tax year~~) the person had:

10 (i) More than (~~fifty~~) fifty-three thousand dollars of property  
11 in this state;

12 (ii) More than (~~fifty~~) fifty-three thousand dollars of payroll  
13 in this state;

14 (iii) More than two hundred (~~fifty~~) sixty-seven thousand  
15 dollars of receipts from this state; or

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

18 (2)(a) Property counting toward the thresholds in subsection  
19 (1)(c)(i) and (iv) of this section is the average value of the  
20 taxpayer's property, including intangible property, owned or rented  
21 and used in this state during the current or immediately preceding  
22 (~~tax~~) calendar year.

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

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

35 (c) The average value of property must be determined by averaging  
36 the values at the beginning and ending of the (~~tax~~) applicable  
37 calendar year; but the department may require the averaging of  
38 monthly values during the (~~tax~~) applicable calendar year if  
39 reasonably required to properly reflect the average value of the  
40 taxpayer's property.

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

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

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

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

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

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

30 (e) Notwithstanding anything else to the contrary in this  
31 subsection, property counting toward the thresholds in subsection  
32 (1)(c)(i) and (iv) of this section does not include a person's  
33 ownership of, or rights in, computer software as defined in RCW  
34 82.04.215, including computer software used in providing a digital  
35 automated service; master copies of software; and digital goods and  
36 digital codes residing on servers located in this state.

37 (3)(a) Payroll counting toward the thresholds in subsection  
38 (1)(c)(ii) and (iv) of this section is the total amount paid by the  
39 taxpayer for compensation in this state during the immediately  
40 preceding tax year plus nonemployee compensation paid to

1 representative third parties in this state. Nonemployee compensation  
2 paid to representative third parties includes the gross amount paid  
3 to nonemployees who represent the taxpayer in interactions with the  
4 taxpayer's clients and includes sales commissions.

5 (b) Employee compensation is paid in this state if the  
6 compensation is properly reportable to this state for unemployment  
7 compensation tax purposes, regardless of whether the compensation was  
8 actually reported to this state.

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

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

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

19 (a) Those amounts included in the numerator of the receipts  
20 factor under RCW 82.04.462;

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

24 (c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or  
25 82.04.270 (~~((with respect to wholesale sales))~~), the gross proceeds of  
26 sales taxable under those statutory provisions and sourced to this  
27 state in accordance with RCW 82.32.730.

28 (5)(a) Each December, the department must review the cumulative  
29 percentage change in the consumer price index. The department must  
30 adjust the thresholds in subsection (1)(c)(i) through (iii) of this  
31 section if the consumer price index has changed by five percent or  
32 more since the later of June 1, 2010, or the date that the thresholds  
33 were last adjusted under this subsection. For purposes of determining  
34 the cumulative percentage change in the consumer price index, the  
35 department must compare the consumer price index available as of  
36 December 1st of the current year with the consumer price index as of  
37 the later of June 1, 2010, or the date that the thresholds were last  
38 adjusted under this subsection. The thresholds must be adjusted to  
39 reflect that cumulative percentage change in the consumer price  
40 index. The adjusted thresholds must be rounded to the nearest one

1 thousand dollars. Any adjustment will apply to tax periods that begin  
2 after the adjustment is made.

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

7 (6)(a)(i) Except as provided in (a)(iii) of this subsection (6),  
8 subsections (1) through (5) of this section only apply with respect  
9 to the taxes on persons engaged in apportionable activities as  
10 defined in RCW 82.04.460 or making wholesale sales taxable under RCW  
11 82.04.257(1) or 82.04.270.

12 (ii) Subject to the limitation in RCW 82.32.531, for purposes of  
13 the taxes imposed under this chapter on ((any)) the business of  
14 making sales at retail or any other activity not included in the  
15 definition of apportionable activities in RCW 82.04.460, other than  
16 the business of making wholesale sales taxed under RCW 82.04.257(1)  
17 or 82.04.270, ((except as provided in RCW 82.32.531,)) a person is  
18 deemed to have a substantial nexus with this state if the person has  
19 a physical presence in this state during the tax year, which need  
20 only be demonstrably more than a slightest presence.

21 (iii) For purposes of the taxes imposed under this chapter on the  
22 business of making sales at retail taxable under RCW 82.04.250(1) or  
23 82.04.257(1), a person is also deemed to have a substantial nexus  
24 with this state if the person's receipts from this state, pursuant to  
25 subsection (4)(c) of this section, meet either criterion in  
26 subsection (1)(c)(iii) or (iv) of this section, as adjusted under  
27 subsection (5) of this section.

28 (b) For purposes of this subsection, a person is physically  
29 present in this state if the person has property or employees in this  
30 state.

31 (c)(i) A person is also physically present in this state for the  
32 purposes of this subsection if the person, either directly or through  
33 an agent or other representative, engages in activities in this state  
34 that are significantly associated with the person's ability to  
35 establish or maintain a market for its products in this state.

36 (ii) A remote seller as defined in RCW 82.08.052 is presumed to  
37 be engaged in activities in this state that are significantly  
38 associated with the remote seller's ability to establish or maintain  
39 a market for its products in this state if the remote seller is  
40 presumed to have a substantial nexus with this state under RCW

1 82.08.052. The presumption in this subsection (6)(c)(ii) may be  
2 rebutted as provided in RCW 82.08.052. To the extent that the  
3 presumption in RCW 82.08.052 is no longer operative pursuant to RCW  
4 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer  
5 operative. (~~Nothing in this section may be construed to affect in~~  
6 ~~any way RCW 82.04.424, 82.08.050(11), or 82.12.040(5) or to narrow~~  
7 ~~the scope of the terms "agent" or "other representative" in this~~  
8 ~~subsection (6)(c).)~~)

9 **Sec. 203.** RCW 82.04.220 and 2011 1st sp.s. c 20 s 101 are each  
10 amended to read as follows:

11 (1) There is levied and collected from every person that has a  
12 substantial nexus with this state a tax for the act or privilege of  
13 engaging in business activities. The tax is measured by the  
14 application of rates against value of products, gross proceeds of  
15 sales, or gross income of the business, as the case may be.

16 (2)(a) A person who has a substantial nexus with this state in  
17 (~~any tax year under the provisions of RCW 82.04.067 will be deemed~~  
18 ~~to have a substantial nexus with this state for the following tax~~  
19 ~~year)) the current calendar year under the provisions of RCW  
20 82.04.067, based solely on the person's property, payroll, or  
21 receipts in this state during the current calendar year, is subject  
22 to the tax imposed under this chapter for the current calendar year  
23 only on business activity occurring on and after the date that the  
24 person established a substantial nexus with this state in the current  
25 calendar year.~~

26 (b) This subsection (2) does not apply to any person who also had  
27 a substantial nexus with this state (i) during the immediately  
28 preceding calendar year under RCW 82.04.067, or (ii) during the  
29 current calendar year under RCW 82.04.067 (1) (a) or (b) or (6)  
30 (a)(ii) or (c).

31 NEW SECTION. **Sec. 204.** RCW 82.04.424 (Exemptions—Certain in-  
32 state activities) and 2015 3rd sp.s. c 5 s 206 & 2003 c 76 s 2 are  
33 each repealed.

34 NEW SECTION. **Sec. 205.** A new section is added to chapter 82.08  
35 RCW to be codified between RCW 82.08.050 and 82.08.052 to read as  
36 follows:

1 A seller with a substantial nexus with this state must comply  
2 with the provisions of this chapter.

3 NEW SECTION. **Sec. 206.** A new section is added to chapter 82.08  
4 RCW to be codified between RCW 82.08.052 and 82.08.054 to read as  
5 follows:

6 (1) A seller has a substantial nexus with this state during a  
7 calendar year for the purposes of collecting the taxes imposed under  
8 this chapter if, during the current or immediately preceding calendar  
9 year:

10 (a) The seller had its property or employees in this state for  
11 the seller's business purposes; or

12 (b) The seller's receipts from retail sales in this state,  
13 pursuant to RCW 82.04.067(4), meet either criterion in RCW  
14 82.04.067(1)(c) (iii) or (iv), as adjusted under RCW 82.04.067(5).

15 (2) A seller also has a substantial nexus with this state during  
16 a calendar year for the purposes of collecting the taxes imposed  
17 under this chapter if the seller's total gross proceeds of sales at  
18 retail sourced to this state under RCW 82.32.730 exceed ten thousand  
19 dollars during the current or immediately preceding calendar year and  
20 at any time during such current or immediately preceding calendar  
21 year:

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

25 (ii) The seller or another person, as the case may be, including  
26 an affiliated person, other than a common carrier acting solely as a  
27 common carrier, engages in or performs any of the following  
28 activities in this state, but not including the activities described  
29 in RCW 82.08.052:

30 (A) Sells a similar line of products as the seller and does so  
31 under the same business name as the seller or a similar business name  
32 as the seller;

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

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

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

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

6 (F) Facilitates the sale of tangible personal property to  
7 purchasers in this state by allowing the seller's purchasers in this  
8 state to pick up or return tangible personal property sold by the  
9 seller at an office, distribution facility, warehouse, storage place,  
10 or any other place of business maintained by that person in this  
11 state;

12 (G) Shares management, business systems, business practices, or  
13 employees with the seller or, in the case of an affiliated person,  
14 engages in intercompany transactions related to the activities  
15 occurring with the seller to establish or maintain the seller's  
16 market in this state; or

17 (H) Conducts any other activities in this state that are  
18 significantly associated with the seller's ability to establish and  
19 maintain a market in this state for the seller's sales of products to  
20 purchasers in this state; or

21 (b)(i) The seller is under contract with a payment processor or  
22 merchant bank, or accepts credit cards issued either by a financial  
23 institution under a license from a credit card association or by an  
24 entity that also authorizes purchases and settles with consumers and  
25 merchants, if the payment processor, merchant bank, credit card  
26 association, or credit card issuer has a substantial nexus with this  
27 state for purposes of collecting the taxes imposed under this  
28 chapter.

29 (ii) Pursuant to RCW 82.32.330(3)(u), the department may disclose  
30 the identity of payment processors, credit card associations, credit  
31 card issuers described in (b)(i) of this subsection (2), and merchant  
32 banks that have a substantial nexus with this state for purposes of  
33 collecting the taxes imposed under this chapter.

34 (3)(a) For purposes of subsection (2)(a)(i) of this section, a  
35 marketplace facilitator is deemed to have a substantial nexus with  
36 this state during a calendar year if:

37 (i) The marketplace facilitator or any affiliated person  
38 maintained a physical presence in this state during any portion of  
39 the current or immediately preceding calendar year to engage in any

1 of the activities described in subsection (5)(a)(i) or (ii) of this  
2 section; or

3 (ii) The marketplace facilitator generated more than ten thousand  
4 dollars of gross proceeds of sales in the current or immediately  
5 preceding calendar year from retail sales made through its physical  
6 or electronic marketplace by sellers that are physically located in  
7 this state. For purposes of this subsection (3)(a)(ii), a seller is  
8 presumed to be physically located in this state if the address for  
9 the seller maintained in the business records of the marketplace  
10 facilitator is in this state.

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

15 (4) For purposes of this section, persons are "affiliated  
16 persons" with respect to each other where one of the persons has an  
17 ownership interest of more than five percent, whether direct or  
18 indirect, in the other, or where an ownership interest of more than  
19 five percent, whether direct or indirect, is held in each of the  
20 persons by another person or by a group of other persons who are  
21 affiliated with respect to each other.

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

24 (a) "Marketplace facilitator" means a person that contracts with  
25 sellers to facilitate, for consideration, the sale of the seller's  
26 products through a physical or electronic marketplace operated by the  
27 person, and engages, either directly or indirectly, through one or  
28 more affiliated persons, in:

29 (i) Any of the following:

30 (A) Transmitting or otherwise communicating the offer or  
31 acceptance between the buyer and seller;

32 (B) Owning or operating the infrastructure, electronic or  
33 physical, or technology that brings buyers and sellers together;

34 (C) Providing a virtual currency that buyers are allowed or  
35 required to use to purchase products from the seller; or

36 (D) Software development or research and development activities  
37 related to any of the activities described in (a)(i)(A) through (C)  
38 or (ii)(A) through (H) of this subsection (5), if such activities are  
39 directly related to a physical or electronic marketplace operated by  
40 the person or an affiliated person; and

1 (ii) Any of the following activities with respect to the seller's  
2 products:

- 3 (A) Payment processing services;
- 4 (B) Fulfillment or storage services;
- 5 (C) Listing products for sale;
- 6 (D) Setting prices;
- 7 (E) Branding sales as those of the marketplace facilitator;
- 8 (F) Order taking;
- 9 (G) Advertising or promotion; or
- 10 (H) Providing customer service or accepting or assisting with  
11 returns or exchanges.

12 (b) "Merchant bank" means a financial institution or any other  
13 member of a credit card network that allows the seller to accept  
14 credit card payments and is responsible for depositing transaction  
15 proceeds into the seller's designated account.

16 (c) "Payment processor" means a person that contracts directly  
17 with a seller to provide settlement for the seller's credit card,  
18 debit card, or other payment transactions.

19 (d) "Product" means any property or service that is sold in a  
20 sale at retail as defined in RCW 82.04.050.

21 (6) This section is subject to RCW 82.32.762.

22 NEW SECTION. **Sec. 207.** A new section is added to chapter 82.08  
23 RCW to be codified between section 206 of this act and RCW 82.08.054  
24 to read as follows:

25 (1) For purposes of this chapter, a marketplace facilitator is  
26 deemed to be an agent of any marketplace seller making retail sales  
27 through the marketplace facilitator's physical or electronic  
28 marketplace. A marketplace facilitator with a substantial nexus with  
29 this state must collect and remit to the department the taxes imposed  
30 under this chapter on all taxable retail sales made through the  
31 marketplace facilitator's marketplace and sourced to this state under  
32 RCW 82.32.730, whether as principal or as the agent of a marketplace  
33 seller.

34 (2) A marketplace facilitator is relieved of liability under this  
35 chapter for failure to collect the correct amount of tax to the  
36 extent that the marketplace facilitator can show to the department's  
37 satisfaction that the error was due to incorrect information given to  
38 the marketplace facilitator by the marketplace seller, unless the  
39 marketplace facilitator and marketplace seller are affiliated

1 persons. Where the marketplace facilitator is relieved of liability  
2 under this subsection (2), the marketplace seller is solely liable  
3 for the amount of uncollected tax due.

4 (3)(a) A marketplace facilitator is relieved of liability under  
5 this chapter for the failure to collect tax on taxable retail sales  
6 to the extent that the marketplace facilitator can show to the  
7 department's satisfaction that:

8 (i) The taxable retail sale was made through the marketplace  
9 facilitator's marketplace;

10 (ii) The taxable retail sale was made solely as the agent of a  
11 marketplace seller, and the marketplace facilitator and marketplace  
12 seller are not affiliated persons; and

13 (iii) The failure to collect sales tax was not due to an error in  
14 sourcing the sale under RCW 82.32.730.

15 (b) Where the marketplace facilitator is relieved of liability  
16 under this subsection (3), the marketplace seller is also relieved of  
17 liability for the amount of uncollected tax due, subject to the  
18 limitations in subsection (4) of this section.

19 (4) 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 (4) must be provided in a  
29 form and manner prescribed by or acceptable to the department. This  
30 subsection (4) 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 (5) Nothing in this section affects the obligation of any  
36 purchaser to remit sales or use tax as to any applicable taxable  
37 transaction in which the seller or the seller's agent does not  
38 collect and remit sales tax.

39 (6) For purposes of this section, the following definitions  
40 apply:

1 (a) "Affiliated person" has the same meaning as in section 206 of  
2 this act.

3 (b) "Marketplace facilitator" has the same meaning as in section  
4 206 of this act.

5 (c) "Marketplace seller" means a seller that makes retail sales  
6 through any physical or electronic marketplace operated by a  
7 marketplace facilitator, regardless of whether the seller is required  
8 to be registered with the department as provided in RCW 82.32.030.

9 (7) This section is subject to RCW 82.32.762.

10 **Sec. 208.** RCW 82.08.050 and 2010 c 112 s 8 are each amended to  
11 read as follows:

12 (1)(a) The tax imposed in this chapter must be paid by the buyer  
13 to the seller. Each seller must collect from the buyer the full  
14 amount of the tax payable in respect to each taxable sale in  
15 accordance with the schedule of collections adopted by the department  
16 under the provisions of RCW 82.08.060.

17 (b) Sellers, including marketplace facilitators as defined in  
18 section 206 of this act, establishing a substantial nexus with this  
19 state during the current calendar year based solely on the provisions  
20 of section 206 (1)(b), (2), or (3)(a)(ii) of this act, and who did  
21 not have a substantial nexus with this state during the immediately  
22 preceding calendar year for purposes of collecting the taxes imposed  
23 under this chapter, must begin collecting state and local sales taxes  
24 on taxable retail sales sourced to this state beginning on the first  
25 day of the calendar month that is at least thirty days from the date  
26 that the person established a substantial nexus with this state.

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

34 (3) Except as otherwise provided in this section, if any seller  
35 fails to collect the tax imposed in this chapter or, having collected  
36 the tax, fails to pay it to the department in the manner prescribed  
37 by this chapter, whether such failure is the result of the seller's  
38 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. 209.** RCW 82.08.052 and 2015 3rd sp.s. c 5 s 202 are each  
35 amended to read as follows:

36 (1) For purposes of this chapter, a remote seller is presumed to  
37 have a substantial nexus with this state and is obligated to collect  
38 retail sales tax during the current calendar year if the remote  
39 seller enters into an agreement with a resident of this state under

1 which the resident, for a commission or other consideration, directly  
2 or indirectly refers potential customers, whether by a link on an  
3 internet web site or otherwise, to the remote seller, if the  
4 cumulative gross receipts from sales by the remote seller to  
5 Washington customers (~~(in this state)~~) who are referred to the remote  
6 seller by all residents with this type of an agreement with the  
7 remote seller exceed ten thousand dollars during the current or  
8 immediately preceding calendar year. This presumption may be rebutted  
9 by proof that the resident with whom the remote seller has an  
10 agreement did not engage in any solicitation in this state on behalf  
11 of the remote seller that would satisfy the nexus requirement of the  
12 United States Constitution during the calendar year in question.  
13 Proof may be shown by (a) establishing, in a manner acceptable to the  
14 department, that (i) each in-state person with whom the remote seller  
15 has an agreement is prohibited from engaging in any solicitation  
16 activities in this state that refer potential customers to the remote  
17 seller, and (ii) such in-state person or persons have complied with  
18 that prohibition; or (b) any other means as may be approved by the  
19 department.

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

22 (a) "Remote seller" means a seller that makes retail sales in  
23 this state through one or more agreements described in subsection (1)  
24 of this section, and the seller's other physical presence in this  
25 state, if any, is not sufficient to establish a retail sales or use  
26 tax collection obligation under the commerce clause of the United  
27 States Constitution.

28 (b) "Washington customer" means a purchaser of goods or services  
29 that are received in this state by the purchaser or the purchaser's  
30 donee. "Washington customer" also means a purchaser that provides a  
31 seller with an address in this state during the consummation of the  
32 sale, if the location where the goods or services are received by the  
33 purchaser or the purchaser's donee is not known.

34 (3) (~~Nothing in this section may be construed to affect in any~~  
35 ~~way RCW 82.04.424, 82.08.050(11), or 82.12.040(5).~~

36 ~~(4))~~) This section is subject to RCW 82.32.762.

37 **Sec. 210.** RCW 82.12.040 and 2015 c 169 s 9 are each amended to  
38 read as follows:

1           (1) Every person who (~~maintains in this state a place of~~  
2 ~~business or a stock of goods, or engages in business activities~~  
3 ~~within this state,~~) has a substantial nexus with this state based on  
4 RCW 82.08.052 or section 206 of this act must obtain from the  
5 department a certificate of registration, and must, at the time of  
6 making sales of tangible personal property, digital goods, digital  
7 codes, digital automated services, extended warranties, or sales of  
8 any service defined as a retail sale in RCW 82.04.050 (2) (a) or (g)  
9 or (6)(~~(b)~~) (c), or making transfers of either possession or title,  
10 or both, of tangible personal property for use in this state, collect  
11 from the purchasers or transferees the tax imposed under this  
12 chapter. The tax to be collected under this section must be in an  
13 amount equal to the purchase price multiplied by the rate in effect  
14 for the retail sales tax under RCW 82.08.020. (~~For the purposes of~~  
15 ~~this chapter, the phrase "maintains in this state a place of~~  
16 ~~business" includes the solicitation of sales and/or taking of orders~~  
17 ~~by sales agents or traveling representatives. For the purposes of~~  
18 ~~this chapter, "engages in business activity within this state"~~  
19 ~~includes every activity which is sufficient under the Constitution of~~  
20 ~~the United States for this state to require collection of tax under~~  
21 ~~this chapter. The department must in rules specify activities which~~  
22 ~~constitute engaging in business activity within this state, and must~~  
23 ~~keep the rules current with future court interpretations of the~~  
24 ~~Constitution of the United States.~~)

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

35           (3) The tax required to be collected by this chapter is deemed to  
36 be held in trust by the retailer until paid to the department, and  
37 any retailer who appropriates or converts the tax collected to the  
38 retailer's own use or to any use other than the payment of the tax  
39 provided herein to the extent that the money required to be collected  
40 is not available for payment on the due date as prescribed is guilty

1 of a misdemeanor. In case any seller fails to collect the tax herein  
2 imposed or having collected the tax, fails to pay the same to the  
3 department in the manner prescribed, whether such failure is the  
4 result of the seller's own acts or the result of acts or conditions  
5 beyond the seller's control, the seller is nevertheless personally  
6 liable to the state for the amount of such tax, unless the seller has  
7 taken from the buyer a copy of a direct pay permit issued under RCW  
8 82.32.087.

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

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

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

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

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

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

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

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

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

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

6       (~~(9)~~) (7) Notwithstanding subsections (1) through (4) of this  
7 section, any licensed dealer facilitating a firearm sale or transfer  
8 between two unlicensed persons by conducting background checks under  
9 chapter 9.41 RCW is not obligated to collect the tax imposed by this  
10 chapter.

11       NEW SECTION.   **Sec. 211.** A new section is added to chapter 82.32  
12 RCW to read as follows:

13       (1) Notwithstanding any other provision of law, and whether or  
14 not the department initiates an audit or other tax collection  
15 procedure, the department may bring a declaratory judgment action  
16 under chapter 7.24 RCW, regardless of any other remedy available to  
17 the department, against any person the department believes has a  
18 substantial nexus with this state under section 206(1)(b) of this act  
19 to establish that the obligation to remit sales tax is applicable and  
20 valid under state and federal law.

21       (2) The filing of the declaratory judgment action by the  
22 department as authorized in this section prohibits the department,  
23 during the pendency of the action and any subsequent appeal, from  
24 enforcing the tax collection obligations of chapter 82.08 RCW against  
25 any remote seller who does not affirmatively consent or otherwise  
26 remit sales tax to the department on a voluntary basis. The  
27 prohibition in this subsection does not apply if there is a previous  
28 judgment from a court establishing the validity of the tax collection  
29 obligations of chapter 82.08 RCW with respect to the particular  
30 taxpayer.

31       (3) Notwithstanding any other provisions of state law, attorneys'  
32 fees may not be awarded to any party in any action brought pursuant  
33 to this section or any appeal from any action brought pursuant to  
34 this section.

35       (4) For purposes of this section, "remote seller" means any  
36 seller that makes retail sales in this state but does not have a  
37 physical presence in this state.

1        NEW SECTION.    **Sec. 212.**    A new section is added to chapter 82.32  
2    RCW to read as follows:

3        (1) A taxpayer that, for the purposes of the tax collection  
4    obligations in chapter 82.08 RCW, has a substantial nexus with this  
5    state solely under the provisions of section 206(1)(b) of this act  
6    and is complying with the requirements of chapter 82.08 RCW,  
7    voluntarily or otherwise, may only seek a recovery of sales taxes,  
8    penalties, or interest from the department by following the recovery  
9    procedures established under RCW 82.32.060. However, no claim may be  
10   granted on the basis that the taxpayer lacked a physical presence in  
11   the state and complied with the tax collection provisions of chapter  
12   82.08 RCW voluntarily while covered by the prohibition on enforcement  
13   provided in section 211 of this act.

14        (2) Neither the state nor any seller who remits sales tax  
15   voluntarily or otherwise under this act is liable to a purchaser who  
16   claims that the sales tax has been over collected because a provision  
17   of this act is later deemed unlawful.

18        (3) Nothing in this act affects the obligation of any purchaser  
19   from this state to remit sales or use tax as to any applicable  
20   taxable transaction in which the seller does not collect and remit  
21   sales tax.

22        **Sec. 213.**    RCW 82.32.762 and 2015 3rd sp.s. c 5 s 205 are each  
23   amended to read as follows:

24        (1) If the department determines that a change, taking effect  
25   after (~~September 1, 2015~~) the effective date of this section, in  
26   the streamlined sales and use tax agreement or federal law creates a  
27   conflict with any provision of RCW 82.08.052, section 206 of this  
28   act, or section 207 of this act, such conflicting provision or  
29   provisions of RCW 82.08.052, section 206 of this act, or section 207  
30   of this act, including any related provisions that would not function  
31   as originally intended, have no further force and effect as of the  
32   date the change in the streamlined sales and use tax agreement or  
33   federal law becomes effective.

34        (2) For purposes of this section:

35        (a) A change in federal law conflicts with RCW 82.08.052, section  
36   206 of this act, or section 207 of this act if the change clearly  
37   allows states to impose greater sales and use tax collection  
38   obligations on remote sellers than provided for, or clearly prevents  
39   states from imposing sales and use tax collection obligations on

1 remote sellers to the extent provided for, under RCW 82.08.052,  
2 section 206 of this act, or section 207 of this act.

3 (b) A change in the streamlined sales and use tax agreement  
4 conflicts with RCW 82.08.052, section 206 of this act, or section 207  
5 of this act if one or more provisions of RCW 82.08.052, section 206  
6 of this act, or section 207 of this act causes this state to be found  
7 out of compliance with the streamlined sales and use tax agreement by  
8 its governing board.

9 (3) If the department makes a determination under this section  
10 that a change in federal law or the streamlined sales and use tax  
11 agreement conflicts with one or more provisions of RCW 82.08.052,  
12 section 206 of this act, or section 207 of this act, the department:

13 (a) May adopt rules in accordance with chapter 34.05 RCW that are  
14 consistent with the streamlined sales and use tax agreement and that  
15 impose sales and use tax collection obligations on remote sellers to  
16 the fullest extent allowed under state and federal law; and

17 (b) Must include information on its web site informing taxpayers  
18 and the public (i) of the provision or provisions of RCW 82.08.052,  
19 section 206 of this act, or section 207 of this act that will have no  
20 further force and effect, (ii) when such change will become  
21 effective, and (iii) about how to participate in any rule making  
22 conducted by the department in accordance with (a) of this subsection  
23 (3).

24 (4) For purposes of this section, "remote seller" has the same  
25 meaning as in RCW 82.08.052.

### 26 Part III

#### 27 Sales and Use Tax Notice and Reporting Requirements

28 NEW SECTION. **Sec. 301.** The definitions in this section apply  
29 throughout this chapter unless the context clearly requires  
30 otherwise.

31 (1) "Consumer" has the same meaning as in chapters 82.04, 82.08,  
32 and 82.12 RCW.

33 (2) "Department" has the same meaning as in RCW 82.02.010.

34 (3) "Product" has the same meaning as in RCW 82.32.023.

35 (4) "Purchaser" means any consumer who purchases or leases a  
36 product sourced to this state under RCW 82.32.730.

37 (5) "Retail sale" has the same meaning as in RCW 82.04.050.

38 (6) "Sale" has the same meaning as in RCW 82.04.040.

1 (7) "Seller" has the same meaning as in RCW 82.08.010, and  
2 includes a marketplace facilitator as defined in section 206 of this  
3 act.

4 NEW SECTION. **Sec. 302.** (1) Except as otherwise provided in  
5 subsection (5) of this section, a seller who does not collect the tax  
6 imposed under chapter 82.08 or 82.12 RCW on a taxable retail sale  
7 must comply with the notice and reporting requirements of this  
8 section. For taxable retail sales made through a marketplace  
9 facilitator or other agent, the marketplace facilitator or other  
10 agent must comply with the notice and reporting requirements of this  
11 section, and the principal is not subject to the notice and reporting  
12 requirements of this section with respect to those sales.

13 (2) A seller subject to the notice and reporting requirements of  
14 this section must provide a notice to each consumer at the time of  
15 each taxable retail sale.

16 (a) The notice under this subsection (2) must include the  
17 following information:

18 (i) A statement that neither sales nor use tax is being collected  
19 or remitted upon the sale;

20 (ii) A statement that the consumer may be required to remit sales  
21 or use tax directly to the department; and

22 (iii) Instructions for obtaining additional information from the  
23 department regarding whether and how to remit the sales or use tax to  
24 the department.

25 (b) The notice under this subsection (2) must be prominently  
26 displayed on all invoices and order forms, including, where  
27 applicable, electronic and catalogue invoices and order forms, and  
28 upon each sales receipt or similar document provided to the  
29 purchaser, whether in paper or electronic form. No indication may be  
30 made that sales or use tax is not imposed upon the transaction,  
31 unless:

32 (i) Such indication is followed immediately with the notice  
33 required by this subsection (2); or

34 (ii) The transaction with respect to which the indication is  
35 given is exempt from sales and use tax pursuant to law.

36 (3) A seller subject to the notice and reporting requirements of  
37 this section must, no later than January 31st of each year, provide a  
38 report to each consumer for whom the seller was required to provide a  
39 notice under subsection (2) of this section.

1 (a) The report under this subsection (3) must include:  
2 (i) A statement that the seller did not collect sales or use tax  
3 on the consumer's transactions with the seller and that the consumer  
4 may be required to remit such tax directly to the department;  
5 (ii) A list, by date, generally indicating the type of product  
6 purchased or leased during the immediately preceding calendar year by  
7 the consumer from the seller sourced to this state under RCW  
8 82.32.730 and the price of each product;  
9 (iii) Instructions for obtaining additional information from the  
10 department regarding whether and how to remit the sales or use tax to  
11 the department;  
12 (iv) A statement that the seller is required to submit a report  
13 to the department pursuant to subsection (4) of this section stating  
14 the total dollar amount of the consumer's purchases from the seller;  
15 and  
16 (v) Any information as the department may reasonably require.  
17 (b) The report required under this subsection (3) must be sent to  
18 the consumer's billing address, or if unknown, the consumer's  
19 shipping address, in an envelope marked prominently with words  
20 indicating important tax information is enclosed. If no billing or  
21 shipping address is known, the report must be sent electronically to  
22 the consumer's last known email address with a subject heading  
23 indicating important tax information is enclosed.  
24 (4) A seller subject to the notice and reporting requirements of  
25 this section must, no later than January 31st of each year, file a  
26 report with the department.  
27 (a) The report under this subsection (4) must include, with  
28 respect to each consumer to whom the seller is required to provide a  
29 report under subsection (3) of this section by January 31st of the  
30 current calendar year:  
31 (i) The consumer's name;  
32 (ii) The billing address and, if different, the last known  
33 mailing address;  
34 (iii) The shipping address for each product sold or leased to  
35 such consumer for delivery to a location in this state during the  
36 immediately preceding calendar year; and  
37 (iv) The total dollar amount of all such purchases by such  
38 consumer.  
39 (b) The report under this subsection (4) must be filed  
40 electronically in a form and manner required by the department.

1 (5) The following exemptions to the notice and reporting  
2 requirements of this section apply:

3 (a) A seller who made less than two hundred thousand dollars in  
4 total worldwide gross retail sales during the immediately preceding  
5 calendar year is not required to file reports under subsections (3)  
6 and (4) of this section in the current calendar year.

7 (b) A seller who made less than one hundred thousand dollars in  
8 total worldwide gross retail sales during the immediately preceding  
9 calendar year is not required to provide notice under subsection (2)  
10 of this section with respect to retail sales made in the current  
11 calendar year.

12 (c) A seller who made less than one hundred thousand dollars in  
13 total gross retail sales sourced to this state under RCW 82.32.730  
14 during the immediately preceding calendar year is not required to  
15 file reports under subsections (3) and (4) of this section in the  
16 current calendar year.

17 (d) A seller who made less than fifty thousand dollars in total  
18 gross retail sales sourced to this state under RCW 82.32.730 during  
19 the immediately preceding calendar year is not required to provide  
20 notice under subsection (2) of this section with respect to retail  
21 sales made in the current calendar year.

22 (e) A seller who is registered with the department to collect and  
23 remit sales and use tax, and who makes a reasonable effort to comply  
24 with the requirements of RCW 82.08.050 and 82.12.040, is not required  
25 to provide notice or file reports under this section.

26 NEW SECTION. **Sec. 303.** (1) The following penalties apply to any  
27 seller who fails to provide notices and reports as required by  
28 section 302 of this act:

29 (a) The department must assess a penalty against any seller who  
30 fails to provide notice as required by section 302(2) of this act, in  
31 addition to any other applicable penalties, in the amount of five  
32 dollars for each such failure.

33 (b) The department must assess a penalty against any seller who  
34 fails to provide a report as required by section 302(3) of this act,  
35 in addition to any other applicable penalty, in the amount of ten  
36 dollars for each such failure.

37 (c) The department must assess a penalty against any seller who  
38 fails to file a report as required by section 302(4) of this act, in  
39 addition to any other applicable penalty, equal to ten dollars times

1 the number of such consumers that should have been included on such  
2 report.

3 (2) When assessing a penalty under this section, the department  
4 may use any reasonable sampling or estimation technique where  
5 necessary or appropriate to determine the number of failures in any  
6 calendar year.

7 (3) Interest accrues on the amount of the total penalty that has  
8 been assessed under this section until the total penalty amount is  
9 paid in full. Interest imposed under this section must be computed  
10 and assessed as provided in RCW 82.32.050 as if the penalty imposed  
11 under this subsection were a tax liability.

12 (4) The department must notify a seller by mail, or  
13 electronically as provided in RCW 82.32.135, of the amount of any  
14 penalty and interest due under this section. Amounts due under this  
15 section must be paid in full within thirty days from the date of the  
16 notice, or within such further time as the department may provide in  
17 its sole discretion.

18 (5)(a)(i) A seller is entitled to a conditional waiver of  
19 penalties and interest imposed under this section if the seller  
20 enters into a written agreement with the department committing to  
21 fully comply with all notice and reporting requirements of this  
22 chapter beginning by a date acceptable to the department.

23 (ii) The department may grant a waiver of penalties and interest  
24 under this subsection (5)(a) for penalties and interest assessed for  
25 a seller's failure to comply with the notice and reporting  
26 requirements for one or more violations.

27 (iii) The department may not grant more than one request by a  
28 seller for a waiver of penalties and interest under this subsection  
29 (5)(a).

30 (iv) The department must reassess penalties and interest  
31 conditionally waived under this subsection (5)(a) if the department  
32 finds that, after the date that the seller agreed to fully comply  
33 with the notice and reporting requirements of this chapter, the  
34 seller failed to:

35 (A) Provide notice under section 302(2) of this act to at least  
36 ninety-five percent of the consumers entitled to such notice in any  
37 given calendar year or portion of the initial calendar year in which  
38 the agreement required under this subsection was in effect if the  
39 agreement was in effect for less than the entire calendar year;

1 (B) Timely provide the reports required under section 302(3) of  
2 this act to all consumers who received notice from the seller under  
3 section 302(2) of this act during any calendar year, unless the  
4 department finds that any such failure was due to circumstances  
5 beyond the seller's control; or

6 (C) Timely provide the reports required under section 302(4) of  
7 this act during any calendar year, unless the department finds that  
8 any such failure was due to circumstances beyond the seller's  
9 control.

10 (v) The department may not reassess penalties and interest  
11 conditionally waived under this subsection (5)(a) more than four  
12 calendar years following the calendar year in which the department  
13 granted the conditional waiver under this subsection (5)(a).

14 (vi) The provisions of subsection (4) of this section apply to  
15 penalties and interest reassessed under this subsection (5)(a). The  
16 department may add additional interest on penalties reassessed under  
17 this subsection (5)(a) only if the total amount of penalties  
18 reassessed under this subsection (5)(a) is not paid in full by the  
19 date due. Additional interest authorized under this subsection  
20 (5)(a)(vi) applies beginning on the day immediately following the day  
21 that the reassessed penalties were due and accrues until the total  
22 amount of reassessed penalties are paid in full.

23 (b) The department must waive penalties and interest imposed  
24 under this section if the department determines that the failure of  
25 the seller to fully comply with the notice or reporting requirements  
26 was due to circumstances beyond the seller's control.

27 (c) A request for a waiver of penalties and interest under this  
28 subsection must be received by the department in writing and before  
29 the penalties and interest for which a waiver is requested are due  
30 pursuant to subsection (4) of this section. The department must deny  
31 any request for a waiver of penalties and interest that does not  
32 fully comply with the provisions of this subsection (5)(c).

33 NEW SECTION. **Sec. 304.** Chapter 82.32 RCW applies to the  
34 administration of this chapter.

35 NEW SECTION. **Sec. 305.** (1) Except as otherwise provided in this  
36 section, taxes imposed under chapter 82.08 or 82.12 RCW on a taxable  
37 retail sale and payable by a consumer directly to the department are  
38 due, on returns prescribed by the department, by March 1st of the

1 calendar year immediately following the calendar year in which the  
2 taxable retail sale occurred.

3 (2) This section does not apply to the reporting and payment of  
4 taxes imposed under chapters 82.08 and 82.12 RCW:

5 (a) On the retail sale or use of motor vehicles, vessels, or  
6 aircraft; or

7 (b) By consumers who are engaged in business, unless the  
8 department has relieved the consumer of the requirement to file  
9 returns pursuant to RCW 82.32.045(4).

10 NEW SECTION. **Sec. 306.** Nothing in this chapter relieves sellers  
11 or consumers who are subject to chapter 82.08 or 82.12 RCW from any  
12 responsibilities imposed under those chapters. Nor does anything in  
13 this chapter prevent the department from administering and enforcing  
14 the taxes imposed under chapter 82.08 or 82.12 RCW with respect to  
15 any seller or consumer who is subject to such taxes.

16 **Sec. 307.** RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each  
17 amended to read as follows:

18 (1) Except as otherwise provided in this chapter or chapter  
19 82.--- RCW (the new chapter created in section 404 of this act),  
20 payments of the taxes imposed under chapters 82.04, 82.08, 82.12,  
21 82.14, and 82.16 RCW, along with reports and returns on forms  
22 prescribed by the department, are due monthly within twenty-five days  
23 after the end of the month in which the taxable activities occur.

24 (2) The department of revenue may relieve any taxpayer or class  
25 of taxpayers from the obligation of remitting monthly and may require  
26 the return to cover other longer reporting periods, but in no event  
27 may returns be filed for a period greater than one year. For these  
28 taxpayers, tax payments are due on or before the last day of the  
29 month next succeeding the end of the period covered by the return.

30 (3) The department of revenue may also require verified annual  
31 returns from any taxpayer, setting forth such additional information  
32 as it may deem necessary to correctly determine tax liability.

33 (4) Notwithstanding subsections (1) and (2) of this section, the  
34 department may relieve any person of the requirement to file returns  
35 if the following conditions are met:

36 (a) The person's value of products, gross proceeds of sales, or  
37 gross income of the business, from all business activities taxable  
38 under chapter 82.04 RCW, is less than:

1 (i) Twenty-eight thousand dollars per year; or  
2 (ii) Forty-six thousand six hundred sixty-seven dollars per year  
3 for persons generating at least fifty percent of their taxable amount  
4 from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and  
5 82.04.285;

6 (b) The person's gross income of the business from all activities  
7 taxable under chapter 82.16 RCW is less than twenty-four thousand  
8 dollars per year; and

9 (c) The person is not required to collect or pay to the  
10 department of revenue any other tax or fee which the department is  
11 authorized to collect.

12 **Part IV**  
13 **Miscellaneous**

14 NEW SECTION. **Sec. 401.** If any provision of this act or its  
15 application to any person or circumstance is held invalid:

16 (1) The remainder of this act or the application of the provision  
17 to other persons or circumstances is not affected; and

18 (2) If the department of revenue is prevented from enforcing  
19 chapters 82.04, 82.08, and 82.12 RCW against persons without a  
20 physical presence in this state, the department of revenue must  
21 impose such provisions to the fullest extent allowed under the  
22 Constitution and laws of the United States.

23 NEW SECTION. **Sec. 402.** The tax collection, reporting, and  
24 payment obligations imposed by this act apply prospectively only.

25 NEW SECTION. **Sec. 403.** For purposes of determining whether a  
26 person engaged in the business of making sales at retail has a  
27 substantial nexus with this state under the provisions of RCW  
28 82.04.067(6)(a)(iii) or section 206 (1)(b), (2), or (3)(a)(ii) of  
29 this act for taxable periods beginning on the effective date of this  
30 section through December 31, 2017, the person's gross proceeds of  
31 sales are based on the entire 2017 calendar year.

32 NEW SECTION. **Sec. 404.** Sections 301 through 306 of this act  
33 constitute a new chapter in Title 82 RCW.

1        NEW SECTION.    **Sec. 405.**    This act is necessary for the immediate  
2    preservation of the public peace, health, or safety, or support of  
3    the state government and its existing public institutions, and takes  
4    effect July 1, 2017.

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