

2SHB 2157 - H AMD 9876

By Representative Stokesbary

1 On page 33, after line 18, insert the following:

2 **"Part VII**

3 **Royalty Income on Prewritten Computer Software**

4 **Sec. 701.** RCW 82.04.050 and 2017 3rd sp.s. c 37 s 1201 are each
5 amended to read as follows:

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

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

17 (ii) Installs, repairs, cleans, alters, imprints, improves,
18 constructs, or decorates real or personal property of or for
19 consumers, if such tangible personal property becomes an ingredient
20 or component of such real or personal property without intervening
21 use by such person; or

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

29 (iv) Purchases for the purpose of consuming the property
30 purchased in producing ferrosilicon which is subsequently used in
31 producing magnesium for sale, if the primary purpose of such property

1 is to create a chemical reaction directly through contact with an
2 ingredient of ferrosilicon; or

3 (v) Purchases for the purpose of providing the property to
4 consumers as part of competitive telephone service, as defined in RCW
5 82.04.065; or

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

11 (b) The term includes every sale of tangible personal property
12 that is used or consumed or to be used or consumed in the performance
13 of any activity defined as a "sale at retail" or "retail sale" even
14 though such property is resold or used as provided in (a)(i) through
15 (vi) of this subsection following such use.

16 (c) The term also means every sale of tangible personal property
17 to persons engaged in any business that is taxable under RCW
18 82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908.

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

22 (a) The installing, repairing, cleaning, altering, imprinting, or
23 improving of tangible personal property of or for consumers,
24 including charges made for the mere use of facilities in respect
25 thereto, but excluding charges made for the use of self-service
26 laundry facilities, and also excluding sales of laundry service to
27 nonprofit health care facilities, and excluding services rendered in
28 respect to live animals, birds and insects;

29 (b) The constructing, repairing, decorating, or improving of new
30 or existing buildings or other structures under, upon, or above real
31 property of or for consumers, including the installing or attaching
32 of any article of tangible personal property therein or thereto,
33 whether or not such personal property becomes a part of the realty by
34 virtue of installation, and also includes the sale of services or
35 charges made for the clearing of land and the moving of earth
36 excepting the mere leveling of land used in commercial farming or
37 agriculture;

38 (c) The constructing, repairing, or improving of any structure
39 upon, above, or under any real property owned by an owner who conveys
40 the property by title, possession, or any other means to the person

1 performing such construction, repair, or improvement for the purpose
2 of performing such construction, repair, or improvement and the
3 property is then reconveyed by title, possession, or any other means
4 to the original owner;

5 (d) The cleaning, fumigating, razing, or moving of existing
6 buildings or structures, but does not include the charge made for
7 janitorial services; and for purposes of this section the term
8 "janitorial services" means those cleaning and caretaking services
9 ordinarily performed by commercial janitor service businesses
10 including, but not limited to, wall and window washing, floor
11 cleaning and waxing, and the cleaning in place of rugs, drapes and
12 upholstery. The term "janitorial services" does not include painting,
13 papering, repairing, furnace or septic tank cleaning, snow removal or
14 sandblasting;

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

18 (f) The furnishing of lodging and all other services by a hotel,
19 rooming house, tourist court, motel, trailer camp, and the granting
20 of any similar license to use real property, as distinguished from
21 the renting or leasing of real property, and it is presumed that the
22 occupancy of real property for a continuous period of one month or
23 more constitutes a rental or lease of real property and not a mere
24 license to use or enjoy the same. For the purposes of this
25 subsection, it is presumed that the sale of and charge made for the
26 furnishing of lodging for a continuous period of one month or more to
27 a person is a rental or lease of real property and not a mere license
28 to enjoy the same;

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

31 (h) Persons taxable under (a), (b), (c), (d), (e), (f), and (g)
32 of this subsection when such sales or charges are for property, labor
33 and services which are used or consumed in whole or in part by such
34 persons in the performance of any activity defined as a "sale at
35 retail" or "retail sale" even though such property, labor and
36 services may be resold after such use or consumption. Nothing
37 contained in this subsection may be construed to modify subsection
38 (1) of this section and nothing contained in subsection (1) of this
39 section may be construed to modify this subsection.

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

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

7 (b) Credit bureau services;

8 (c) Automobile parking and storage garage services;

9 (d) Landscape maintenance and horticultural services but
10 excluding (i) horticultural services provided to farmers and (ii)
11 pruning, trimming, repairing, removing, and clearing of trees and
12 brush near electric transmission or distribution lines or equipment,
13 if performed by or at the direction of an electric utility;

14 (e) Service charges associated with tickets to professional
15 sporting events;

16 (f) The following personal services: Tanning salon services,
17 tattoo parlor services, steam bath services, turkish bath services,
18 escort services, and dating services; and

19 (g) (i) Operating an athletic or fitness facility, including all
20 charges for the use of such a facility or for any associated services
21 and amenities, except as provided in (g) (ii) of this subsection.

22 (ii) Notwithstanding anything to the contrary in (g) (i) of this
23 subsection (3), the term "sale at retail" and "retail sale" under
24 this subsection does not include:

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

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

32 (C) Separately stated charges for services, such as advertising,
33 massage, nutritional consulting, and body composition testing, that
34 do not require the customer to engage in physical fitness activities
35 to receive the service. The exclusion in this subsection
36 (3) (g) (ii) (C) does not apply to personal training services and
37 instruction in a physical fitness activity;

38 (D) Separately stated charges for physical therapy provided by a
39 physical therapist, as those terms are defined in RCW 18.74.010, or
40 occupational therapy provided by an occupational therapy

1 practitioner, as those terms are defined in RCW 18.59.020, when
2 performed pursuant to a referral from an authorized health care
3 practitioner or in consultation with an authorized health care
4 practitioner. For the purposes of this subsection (3)(g)(ii)(D), an
5 authorized health care practitioner means a health care practitioner
6 licensed under chapter 18.83, 18.25, 18.36A, 18.57, 18.57A, 18.71, or
7 18.71A RCW;

8 (E) Rent or association fees charged by a landlord or residential
9 association to a tenant or residential owner with access to an
10 athletic or fitness facility maintained by the landlord or
11 residential association, unless the rent or fee varies depending on
12 whether the tenant or owner has access to the facility;

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

17 (G) The provision of access to an athletic or fitness facility by
18 an educational institution to its students and staff. However,
19 charges made by an educational institution to its alumni or other
20 members of the public for the use of any of the educational
21 institution's athletic or fitness facilities are a retail sale under
22 this subsection (3)(g). For purposes of this subsection
23 (3)(g)(ii)(G), "educational institution" has the same meaning as in
24 RCW 82.04.170;

25 (H) Yoga, chi gong, or martial arts classes, training, or events
26 held at a community center, park, school gymnasium, college or
27 university, hospital or other medical facility, private residence, or
28 any other facility that is not operated within and as part of an
29 athletic or fitness facility.

30 (iii) Nothing in (g)(ii) of this subsection (3) may be construed
31 to affect the taxation of sales made by the operator of an athletic
32 or fitness facility, where such sales are defined as a retail sale
33 under any provision of this section other than this subsection (3).

34 (iv) For the purposes of this subsection (3)(g), the following
35 definitions apply:

36 (A) "Athletic or fitness facility" means an indoor or outdoor
37 facility or portion of a facility that is primarily used for:
38 Exercise classes; strength and conditioning programs; personal
39 training services; tennis, racquetball, handball, squash, or
40 pickleball; or other activities requiring the use of exercise or

1 strength training equipment, such as treadmills, elliptical machines,
2 stair climbers, stationary cycles, rowing machines, pilates
3 equipment, balls, climbing ropes, jump ropes, and weightlifting
4 equipment.

5 (B) "Martial arts" means any of the various systems of training
6 for physical combat or self-defense. "Martial arts" includes, but is
7 not limited to, karate, kung fu, tae kwon do, Krav Maga, boxing,
8 kickboxing, jujitsu, shootfighting, wrestling, aikido, judo, hapkido,
9 Kendo, tai chi, and mixed martial arts.

10 (C) "Physical fitness activities" means activities that involve
11 physical exertion for the purpose of improving or maintaining the
12 general fitness, strength, flexibility, conditioning, or health of
13 the participant. "Physical fitness activities" includes participating
14 in yoga, chi gong, or martial arts.

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

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

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

23 (6) (a) Subject to the limitations of (b) of this subsection, the
24 term also includes the sale of prewritten computer software to a
25 consumer, regardless of the method of delivery to the end user. For
26 purposes of (a) and (b) of this subsection, the sale of prewritten
27 computer software includes the sale of or charge made for a key or an
28 enabling or activation code, where the key or code is required to
29 activate prewritten computer software and put the software into use.
30 There is no separate sale of the key or code from the prewritten
31 computer software, regardless of how the sale may be characterized by
32 the vendor or by the purchaser.

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

35 (i) Custom software; (~~or~~)

36 (ii) The customization of prewritten computer software; or

37 (iii) Prewritten computer software if the seller:

38 (A) Has been registered with the department in Washington state
39 for at least thirty-seven years;

1 (B) Had, at any time after the effective date of this section,
2 combined employment in this state of at least forty thousand full-
3 time and part-time employees, based on data reported to the
4 employment security department; and

5 (C) Engages primarily in the development, sales, and licensing of
6 computer software and services.

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

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

15 (B) For purposes of this subsection (6)(c)(ii), "data processing"
16 means the systematic performance of operations on data to extract the
17 required information in an appropriate form or to convert the data to
18 usable information. Data processing includes check processing, image
19 processing, form processing, survey processing, payroll processing,
20 claim processing, and similar activities.

21 (7) The term also includes the sale of or charge made for an
22 extended warranty to a consumer. For purposes of this subsection,
23 "extended warranty" means an agreement for a specified duration to
24 perform the replacement or repair of tangible personal property at no
25 additional charge or a reduced charge for tangible personal property,
26 labor, or both, or to provide indemnification for the replacement or
27 repair of tangible personal property, based on the occurrence of
28 specified events. The term "extended warranty" does not include an
29 agreement, otherwise meeting the definition of extended warranty in
30 this subsection, if no separate charge is made for the agreement and
31 the value of the agreement is included in the sales price of the
32 tangible personal property covered by the agreement. For purposes of
33 this subsection, "sales price" has the same meaning as in RCW
34 82.08.010.

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

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

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

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

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

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

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

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

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

30 (11) The term also does not include sales of chemical sprays or
31 washes to persons for the purpose of postharvest treatment of fruit
32 for the prevention of scald, fungus, mold, or decay, nor does it
33 include sales of feed, seed, seedlings, fertilizer, agents for
34 enhanced pollination including insects such as bees, and spray
35 materials to: (a) Persons who participate in the federal conservation
36 reserve program, the environmental quality incentives program, the
37 wetlands reserve program, and the wildlife habitat incentives
38 program, or their successors administered by the United States
39 department of agriculture; (b) farmers for the purpose of producing
40 for sale any agricultural product; (c) farmers for the purpose of

1 providing bee pollination services; and (d) farmers acting under
2 cooperative habitat development or access contracts with an
3 organization exempt from federal income tax under 26 U.S.C. Sec.
4 501(c)(3) of the federal internal revenue code or the Washington
5 state department of fish and wildlife to produce or improve wildlife
6 habitat on land that the farmer owns or leases.

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

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

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

32 (15)(a) The term "sale at retail" or "retail sale" includes
33 amounts charged, however labeled, to consumers to engage in any of
34 the activities listed in this subsection (15)(a), including the
35 furnishing of any associated equipment or, except as otherwise
36 provided in this subsection, providing instruction in such
37 activities, where such charges are not otherwise defined as a "sale
38 at retail" or "retail sale" in this section:

39 (i)(A) Golf, including any variant in which either golf balls or
40 golf clubs are used, such as miniature golf, hitting golf balls at a

1 driving range, and golf simulators, and including fees charged by a
2 golf course to a player for using his or her own cart. However,
3 charges for golf instruction are not a retail sale, provided that if
4 the instruction involves the use of a golfing facility that would
5 otherwise require the payment of a fee, such as green fees or driving
6 range fees, such fees, including the applicable retail sales tax,
7 must be separately identified and charged by the golfing facility
8 operator to the instructor or the person receiving the instruction.

9 (B) Notwithstanding (a)(i)(A) of this subsection (15) and except
10 as otherwise provided in this subsection (15)(a)(i)(B), the term
11 "sale at retail" or "retail sale" does not include amounts charged to
12 participate in, or conduct, a golf tournament or other competitive
13 event. However, amounts paid by event participants to the golf
14 facility operator are retail sales under this subsection (15)(a)(i).
15 Likewise, amounts paid by the event organizer to the golf facility
16 are retail sales under this subsection (15)(a)(i), if such amounts
17 vary based on the number of event participants;

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

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

22 (iv) Access to amusement park, theme park, and water park
23 facilities, including but not limited to charges for admission and
24 locker or cabana rentals. Discrete charges for rides or other
25 attractions or entertainment that are in addition to the charge for
26 admission are not a retail sale under this subsection (15)(a)(iv).
27 For the purposes of this subsection, an amusement park or theme park
28 is a location that provides permanently affixed amusement rides,
29 games, and other entertainment, but does not include parks or zoos
30 for which the primary purpose is the exhibition of wildlife, or
31 fairs, carnivals, and festivals as defined in (b)(i) of this
32 subsection;

33 (v) Batting cage activities;

34 (vi) Bowling, but not including competitive events, except that
35 amounts paid by the event participants to the bowling alley operator
36 are retail sales under this subsection (15)(a)(vi). Likewise, amounts
37 paid by the event organizer to the operator of the bowling alley are
38 retail sales under this subsection (15)(a)(vi), if such amounts vary
39 based on the number of event participants;

1 (vii) Climbing on artificial climbing structures, whether indoors
2 or outdoors;

3 (viii) Day trips for sightseeing purposes;

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

6 (x) Horseback riding offered to the public, where the seller
7 furnishes the horse to the buyer and providing instruction is not the
8 primary focus of the activity, including guided rides, but not
9 including therapeutic horseback riding provided by an instructor
10 certified by a nonprofit organization that offers national or
11 international certification for therapeutic riding instructors;

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

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

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

27 (xiv) Go-karting, bumper cars, and other motorized activities
28 where the seller provides the vehicle and the premises where the
29 buyer will operate the vehicle;

30 (xv) Indoor or outdoor playground activities, such as inflatable
31 bounce structures and other inflatables; mazes; trampolines; slides;
32 ball pits; games of tag, including laser tag and soft-dart tag; and
33 human gyroscope rides, regardless of whether such activities occur at
34 the seller's place of business, but not including playground
35 activities provided for children by a licensed child day care center
36 or licensed family day care provider as those terms are defined in
37 RCW ((~~43.215.010~~)) 43.216.010;

38 (xvi) Shooting sports and activities, such as target shooting,
39 skeet, trap, sporting clays, "5" stand, and archery, but only in
40 respect to discrete charges to members of the public to engage in

1 these activities, but not including fees to enter a competitive
2 event, instruction that is entirely or predominately classroom based,
3 or to join or renew a membership at a club, range, or other facility;

4 (xvii) Paintball and airsoft activities;

5 (xviii) Skating, including ice skating, roller skating, and
6 inline skating, but only in respect to discrete charges to members of
7 the public to engage in skating activities, but not including skating
8 lessons, competitive events, team activities, or fees to join or
9 renew a membership at a skating facility, club, or other
10 organization;

11 (xix) Nonmotorized snow sports and activities, such as downhill
12 and cross-country skiing, snowboarding, ski jumping, sledding, snow
13 tubing, snowshoeing, and similar snow sports and activities, whether
14 engaged in outdoors or in an indoor facility with or without snow,
15 but only in respect to discrete charges to the public for the use of
16 land or facilities to engage in nonmotorized snow sports and
17 activities, such as fees, however labeled, for the use of ski lifts
18 and tows and daily or season passes for access to trails or other
19 areas where nonmotorized snow sports and activities are conducted.
20 However, fees for the following are not retail sales under this
21 subsection (15)(a)(xix): (A) Instructional lessons; (B) permits
22 issued by a governmental entity to park a vehicle on or access public
23 lands; and (C) permits or leases granted by an owner of private
24 timberland for recreational access to areas used primarily for
25 growing and harvesting timber; and

26 (xx) Scuba diving; snorkeling; river rafting; surfing;
27 kiteboarding; flyboarding; water slides; inflatables, such as water
28 pillows, water trampolines, and water rollers; and similar water
29 sports and activities.

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

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

38 (ii) Made by an educational institution to its students and staff
39 for activities defined as retail sales by (a)(i) through (xx) of this
40 subsection. However, charges made by an educational institution to

1 its alumni or other members of the general public for these
2 activities are a retail sale under this subsection (15). For purposes
3 of this subsection (15)(b)(ii), "educational institution" has the
4 same meaning as in RCW 82.04.170;

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

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

13 **Sec. 702.** RCW 82.04.2907 and 2015 3rd sp.s. c 5 s 101 are each
14 amended to read as follows:

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

19 (2) For the purposes of this section(~~(7)~~):

20 (a)(i) "Gross income from royalties" means compensation for the
21 use of intangible property, including:

22 (A) Charges in the nature of royalties, regardless of where the
23 intangible property will be used(~~(. For purposes of this subsection,~~
24 "intangible property" includes copyrights, patents, licenses,
25 franchises, trademarks, trade names, and similar items. "Gross income
26 from royalties" does not include compensation for any natural
27 resource, the licensing of prewritten computer software to the end
28 user, or the licensing of digital goods, digital codes, or digital
29 automated services to the end user as defined in RCW 82.04.190(11));
30 and

31 (B) The sale of prewritten computer software to a consumer by a
32 "qualified person", regardless of the method of delivery to the end
33 user. The sale of prewritten computer software includes the sale of
34 or charge made for a key or an enabling or activation code, where the
35 key or code is required to activate prewritten computer software and
36 put the software into use. There is no separate sale of the key or
37 code from the prewritten computer software, regardless of how the
38 sale may be characterized by the vendor or by the purchaser;

1 (ii) "Gross income from royalties" does not include compensation
2 for any natural resource or the licensing of digital goods, digital
3 codes, or digital automated services to the end user as defined in
4 RCW 82.04.190(11);

5 (b) "Intangible property" includes copyrights, patents, licenses,
6 franchises, trademarks, trade names, and similar items; and

7 (c) "Qualified person" means any person for whom all of the
8 following apply:

9 (i) The person has been registered with the department in
10 Washington state for at least thirty-seven years;

11 (ii) At any time after the effective date of this section
12 combined employment in this state of at least forty thousand full-
13 time and part-time employees, based on data reported to the
14 employment security department; and

15 (iii) The business activities of the person primarily include the
16 development, sales, and licensing of computer software and services."

17 Renumber the remaining part and sections consecutively, correct
18 any internal references accordingly, and correct the title.

19 On page 33, line 25, after "IV," strike "and VI" and insert "VI,
20 and VII"

EFFECT: Requires that business and occupation tax must be paid by
qualified persons on the royalties income from prewritten computer
software. Removes the sale of prewritten computer software by
qualified persons from the definition of retail sale.

--- END ---