

SSB 5581 - H COMM AMD
By Committee on Finance

ADOPTED 03/08/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Part I**
4 **Nexus**

5 **Sec. 101.** RCW 82.04.067 and 2017 3rd sp.s. c 28 s 302 are each
6 amended to read as follows:

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

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

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

13 (c) A nonresident individual or a business entity that is
14 organized or commercially domiciled outside this state, and the
15 person had:

16 (i) More than fifty-three thousand dollars of property in this
17 state;

18 (ii) More than fifty-three thousand dollars of payroll in this
19 state;

20 (iii) More than two hundred sixty-seven thousand dollars of
21 receipts from this state; or

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

24 (2)(a) Property counting toward the thresholds in subsection
25 (1)(c)(i) and (iv) of this section is the average value of the
26 taxpayer's property, including intangible property, owned or rented
27 and used in this state during the current or immediately preceding
28 calendar year.

29 (b)(i) Property owned by the taxpayer, other than loans and
30 credit card receivables owned by the taxpayer, is valued at its
31 original cost basis. Loans and credit card receivables owned by the

1 taxpayer are valued at their outstanding principal balance, without
2 regard to any reserve for bad debts. However, if a loan or credit
3 card receivable is charged off in whole or in part for federal income
4 tax purposes, the portion of the loan or credit card receivable
5 charged off is deducted from the outstanding principal balance.

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

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

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

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

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

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

36 (ii)(A) Except as otherwise provided in (d)(ii)(B) of this
37 subsection (2), the definitions in the multistate tax commission's
38 recommended formula for the apportionment and allocation of net
39 income of financial institutions as existing on June 1, 2010, or such

1 subsequent date as may be provided by the department by rule,
2 consistent with the purposes of this section, apply to this section.

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

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

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

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

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

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

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

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

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

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

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

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

24 (6) (a) (i) Except as provided in (a)(iii) of this subsection (6),
25 subsections (1) through (5) of this section only apply with respect
26 to the taxes on persons engaged in apportionable activities as
27 defined in RCW 82.04.460 or making wholesale sales taxable under RCW
28 82.04.257(1) or 82.04.270.

29 (ii) Subject to the limitation in RCW 82.32.531, for purposes of
30 the taxes imposed under this chapter on the business of making sales
31 at retail or any other activity not included in the definition of
32 apportionable activities in RCW 82.04.460, other than the business of
33 making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, a
34 person is deemed to have a substantial nexus with this state if the
35 person has a physical presence in this state during the current or
36 immediately preceding calendar year, which need only be demonstrably
37 more than a slightest presence.

38 (iii) For purposes of the taxes imposed under this chapter on the
39 business of making sales at retail taxable under RCW 82.04.250(1) or
40 82.04.257(1), a person is also deemed to have a substantial nexus

1 with this state if the person's receipts from this state, pursuant to
2 subsection (4)(c) of this section, meet either criterion in
3 subsection (1)(c)(iii) or (iv) of this section, as adjusted under
4 subsection (5) of this section.

5 (b) For purposes of this subsection, a person is physically
6 present in this state if the person has property or employees in this
7 state.

8 (c) ~~((+))~~ A person is also physically present in this state for
9 the purposes of this subsection if the person, either directly or
10 through an agent or other representative, engages in activities in
11 this state that are significantly associated with the person's
12 ability to establish or maintain a market for its products in this
13 state.

14 ~~((+)) A remote seller as defined in RCW 82.08.052 is presumed to
15 be engaged in activities in this state that are significantly
16 associated with the remote seller's ability to establish or maintain
17 a market for its products in this state if the remote seller is
18 presumed to have a substantial nexus with this state under RCW
19 82.08.052. The presumption in this subsection (6)(c)(ii) may be
20 rebutted as provided in RCW 82.08.052. To the extent that the
21 presumption in RCW 82.08.052 is no longer operative pursuant to RCW
22 82.32.762, the presumption in this subsection (6)(c)(ii) is no longer
23 operative.))~~

24 **Sec. 102.** RCW 82.04.067 and 2019 c . . . s 101 (section 101 of
25 this act) are each amended to read as follows:

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

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

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

32 (c) A nonresident individual or a business entity that is
33 organized or commercially domiciled outside this state, and the
34 person had:

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

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

1 ~~(iii))~~ More than ~~((two hundred sixty seven))~~ one hundred
2 thousand dollars of cumulative gross receipts from this state; or

3 ~~((iv) At least twenty five percent of the person's total~~
4 ~~property, total payroll, or total receipts in this state.~~

5 ~~(2) (a) Property counting toward the thresholds in subsection~~
6 ~~(1) (c) (i) and (iv) of this section is the average value of the~~
7 ~~taxpayer's property, including intangible property, owned or rented~~
8 ~~and used in this state during the current or immediately preceding~~
9 ~~calendar year.~~

10 ~~(b) (i) Property owned by the taxpayer, other than loans and~~
11 ~~credit card receivables owned by the taxpayer, is valued at its~~
12 ~~original cost basis. Loans and credit card receivables owned by the~~
13 ~~taxpayer are valued at their outstanding principal balance, without~~
14 ~~regard to any reserve for bad debts. However, if a loan or credit~~
15 ~~card receivable is charged off in whole or in part for federal income~~
16 ~~tax purposes, the portion of the loan or credit card receivable~~
17 ~~charged off is deducted from the outstanding principal balance.~~

18 ~~(ii) Property rented by the taxpayer is valued at eight times the~~
19 ~~net annual rental rate. For purposes of this subsection, "net annual~~
20 ~~rental rate" means the annual rental rate paid by the taxpayer less~~
21 ~~any annual rental rate received by the taxpayer from subrentals.~~

22 ~~(c) The average value of property must be determined by averaging~~
23 ~~the values at the beginning and ending of the applicable calendar~~
24 ~~year; but the department may require the averaging of monthly values~~
25 ~~during the applicable calendar year if reasonably required to~~
26 ~~properly reflect the average value of the taxpayer's property.~~

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

29 ~~(A) Loans secured by real property, personal property, or both~~
30 ~~real and personal property are deemed owned and used in the state if~~
31 ~~the real property or personal property securing the loan is located~~
32 ~~within this state. If the property securing the loan is located both~~
33 ~~within this state and one or more other states, the loan is deemed~~
34 ~~owned and used in this state if more than fifty percent of the fair~~
35 ~~market value of the real or personal property is located within this~~
36 ~~state. If more than fifty percent of the fair market value of the~~
37 ~~real or personal property is not located within any one state, then~~
38 ~~the loan is deemed owned and used in this state if the borrower is~~
39 ~~located in this state. The determination of whether the real or~~
40 ~~personal property securing a loan is located within this state must~~

1 be made, as of the time the original agreement was made, and any and
2 all subsequent substitutions of collateral must be disregarded.

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

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

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

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

16 (e) Notwithstanding anything else to the contrary in this
17 subsection, property counting toward the thresholds in subsection
18 (1) (c) (i) and (iv) of this section does not include a person's
19 ownership of, or rights in, computer software as defined in RCW
20 82.04.215, including computer software used in providing a digital
21 automated service; master copies of software; and digital goods and
22 digital codes residing on servers located in this state.

23 (3) (a) Payroll counting toward the thresholds in subsection
24 (1) (c) (ii) and (iv) of this section is the total amount paid by the
25 taxpayer for compensation in this state during the current or
26 immediately preceding calendar year plus nonemployee compensation
27 paid to representative third parties in this state. Nonemployee
28 compensation paid to representative third parties includes the gross
29 amount paid to nonemployees who represent the taxpayer in
30 interactions with the taxpayer's clients and includes sales
31 commissions.

32 (b) Employee compensation is paid in this state if the
33 compensation is properly reportable to this state for unemployment
34 compensation tax purposes, regardless of whether the compensation was
35 actually reported to this state.

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

39 (d) For purposes of this subsection, "compensation" means wages,
40 salaries, commissions, and any other form of remuneration paid to

1 ~~employees or nonemployees and defined as gross income under 26 U.S.C.~~
2 ~~Sec. 61 of the federal internal revenue code of 1986, as existing on~~
3 ~~June 1, 2010.~~

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

6 ~~(a) Those amounts included in the numerator of the receipts~~
7 ~~factor under RCW 82.04.462;~~

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

11 ~~(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or~~
12 ~~82.04.270, the gross proceeds of sales taxable under those statutory~~
13 ~~provisions and sourced to this state in accordance with RCW~~
14 ~~82.32.730.~~

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

30 ~~(b) As used in this subsection, "consumer price index" means the~~
31 ~~consumer price index for all urban consumers (CPI-U) available from~~
32 ~~the bureau of labor statistics of the United States department of~~
33 ~~labor.~~

34 ~~(6)(a)(i) Except as provided in (a)(iii) of this subsection (6),~~
35 ~~subsections (1) through (5) of this section only apply with respect~~
36 ~~to the taxes on persons engaged in apportionable activities as~~
37 ~~defined in RCW 82.04.460 or making wholesale sales taxable under RCW~~
38 ~~82.04.257(1) or 82.04.270.~~

39 ~~(ii) Subject to the limitation in RCW 82.32.531, for purposes of~~
40 ~~the taxes imposed under this chapter on the business of making sales~~

1 ~~at retail or any other activity not included in the definition of~~
2 ~~apportionable activities in RCW 82.04.460, other than the business of~~
3 ~~making wholesale sales taxed under RCW 82.04.257(1) or 82.04.270, a~~
4 ~~person is deemed to have a substantial nexus with this state if the~~
5 ~~person has a physical presence in this state during the current or~~
6 ~~immediately preceding calendar year, which need only be demonstrably~~
7 ~~more than a slightest presence.~~

8 ~~(iii) For purposes of the taxes imposed under this chapter on the~~
9 ~~business of making sales at retail taxable under RCW 82.04.250(1) or~~
10 ~~82.04.257(1), a person is also deemed to have a substantial nexus~~
11 ~~with this state if the person's receipts from this state, pursuant to~~
12 ~~subsection (4)(c) of this section, meet either criterion in~~
13 ~~subsection (1)(c)(iii) or (iv) of this section, as adjusted under~~
14 ~~subsection (5) of this section.~~

15 ~~(b))~~ (ii) Subject to the limitation in RCW 82.32.531, physical
16 presence in this state, which need only be demonstrably more than a
17 slightest presence.

18 (2)(a) Cumulative gross receipts counting toward the threshold in
19 subsection (1)(c)(i) of this section include all of a person's gross
20 income of the business attributed to this state. For purposes of this
21 subsection, gross income of the business is attributed to this state
22 as follows:

23 (i) For apportionable income, all amounts included in the
24 numerator of the receipts factor under RCW 82.04.462 and, in the case
25 of financial institutions, all amounts included in the numerator of
26 the receipts factor under the rule adopted by the department as
27 authorized in RCW 82.04.460(2); and

28 (ii) For all other income, the gross income of the business
29 allocated to this state in accordance with the sourcing provisions of
30 RCW 82.32.730.

31 (b) For a marketplace facilitator, cumulative gross receipts
32 counting toward the threshold in subsection (1)(c)(i) of this section
33 include, in addition to the gross proceeds of its own sales, the
34 cumulative gross proceeds from sales by all marketplace sellers
35 through the marketplace facilitator's marketplace, including
36 marketplace sellers that do not have a substantial nexus with this
37 state under the provisions of this section.

38 (3)(a) For purposes of ((this)) subsection (1)(c)(ii) of this
39 section, a person is physically present in this state if the person
40 has property or employees in this state.

1 ~~((e))~~ (b) A person is also physically present in this state for
2 the purposes of ~~((this))~~ subsection (1)(c)(ii) of this section if the
3 person, either directly or through an agent or other representative,
4 engages in activities in this state that are significantly associated
5 with the person's ability to establish or maintain a market for its
6 products in this state.

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

9 (a) "Apportionable income" has the same meaning as provided in
10 RCW 82.04.460.

11 (b) "Marketplace," "marketplace facilitator," and "marketplace
12 seller" have the same meaning as provided in RCW 82.08.010.

13 (c) "Product" has the same meaning as provided in RCW 82.32.023.

14 **Sec. 103.** RCW 82.04.220 and 2017 3rd sp.s. c 28 s 303 are each
15 amended to read as follows:

16 (1) There is levied and collected from every person that has a
17 substantial nexus with this state, as provided in RCW 82.04.067, a
18 tax for the act or privilege of engaging in business activities. The
19 tax is measured by the application of rates against value of
20 products, gross proceeds of sales, or gross income of the business,
21 as the case may be.

22 ~~((a))~~ (2) A person who ~~((has))~~ establishes a substantial nexus
23 with this state in the current calendar year under the provisions of
24 RCW 82.04.067~~((, based solely on the person's property, payroll, or~~
25 ~~receipts in this state during the current calendar year,))~~ is subject
26 to the tax imposed under this chapter for the current calendar year
27 only on business activity occurring on and after the date that the
28 person established a substantial nexus with this state in the current
29 calendar year. This subsection does not apply to a person who also
30 had a substantial nexus with this state during the immediately
31 preceding calendar year under RCW 82.04.067, and such person is
32 taxable under this chapter for the current calendar year in its
33 entirety.

34 ~~((b) This subsection (2) does not apply to any person who also~~
35 ~~had a substantial nexus with this state during:~~

36 ~~(i) The immediately preceding calendar year under RCW 82.04.067;~~
37 ~~or~~

38 ~~(ii) The current calendar year under RCW 82.04.067 (1)(a) or (b)~~
39 ~~or (6)(a)(ii) or (c).))~~

1 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.02

2 RCW to read as follows:

3 A person that has a substantial nexus under RCW 82.04.067 is
4 obligated to pay all applicable taxes and fees imposed on that
5 person's business activity, including any taxes and fees enacted
6 after December 31, 2018. For purposes of this section, "taxes and
7 fees" means any monetary exaction, regardless of its label, that is
8 imposed directly on a person engaging in business and that the
9 department is responsible for collecting.

10 **Sec. 105.** RCW 82.08.010 and 2014 c 140 s 11 are each amended to
11 read as follows:

12 For the purposes of this chapter:

13 (1)(a)(i) "Selling price" includes "sales price." "Sales price"
14 means the total amount of consideration, except separately stated
15 trade-in property of like kind, including cash, credit, property, and
16 services, for which tangible personal property, extended warranties,
17 digital goods, digital codes, digital automated services, or other
18 services or anything else defined as a "retail sale" under RCW
19 82.04.050 are sold, leased, or rented, valued in money, whether
20 received in money or otherwise. No deduction from the total amount of
21 consideration is allowed for the following: (A) The seller's cost of
22 the property sold; (B) the cost of materials used, labor or service
23 cost, interest, losses, all costs of transportation to the seller,
24 all taxes imposed on the seller, and any other expense of the seller;
25 (C) charges by the seller for any services necessary to complete the
26 sale, other than delivery and installation charges; (D) delivery
27 charges; and (E) installation charges.

28 (ii) When tangible personal property is rented or leased under
29 circumstances that the consideration paid does not represent a
30 reasonable rental for the use of the articles so rented or leased,
31 the "selling price" must be determined as nearly as possible
32 according to the value of such use at the places of use of similar
33 products of like quality and character under such rules as the
34 department may prescribe;

35 (b) "Selling price" or "sales price" does not include: Discounts,
36 including cash, term, or coupons that are not reimbursed by a third
37 party that are allowed by a seller and taken by a purchaser on a
38 sale; interest, financing, and carrying charges from credit extended
39 on the sale of tangible personal property, extended warranties,

1 digital goods, digital codes, digital automated services, or other
2 services or anything else defined as a retail sale in RCW 82.04.050,
3 if the amount is separately stated on the invoice, bill of sale, or
4 similar document given to the purchaser; and any taxes legally
5 imposed directly on the consumer that are separately stated on the
6 invoice, bill of sale, or similar document given to the purchaser;

7 (c) "Selling price" or "sales price" includes consideration
8 received by the seller from a third party if:

9 (i) The seller actually receives consideration from a party other
10 than the purchaser, and the consideration is directly related to a
11 price reduction or discount on the sale;

12 (ii) The seller has an obligation to pass the price reduction or
13 discount through to the purchaser;

14 (iii) The amount of the consideration attributable to the sale is
15 fixed and determinable by the seller at the time of the sale of the
16 item to the purchaser; and

17 (iv) One of the criteria in this subsection (1)(c)(iv) is met:

18 (A) The purchaser presents a coupon, certificate, or other
19 documentation to the seller to claim a price reduction or discount
20 where the coupon, certificate, or documentation is authorized,
21 distributed, or granted by a third party with the understanding that
22 the third party will reimburse any seller to whom the coupon,
23 certificate, or documentation is presented;

24 (B) The purchaser identifies himself or herself to the seller as
25 a member of a group or organization entitled to a price reduction or
26 discount, however a "preferred customer" card that is available to
27 any patron does not constitute membership in such a group; or

28 (C) The price reduction or discount is identified as a third
29 party price reduction or discount on the invoice received by the
30 purchaser or on a coupon, certificate, or other documentation
31 presented by the purchaser;

32 (2)(a)(i) "Seller" means every person, including the state and
33 its departments and institutions, making sales at retail or retail
34 sales to a buyer, purchaser, or consumer, whether as agent, broker,
35 or principal, except (~~"seller" does not mean~~) as otherwise provided
36 in this subsection (2).

37 (ii) "Seller" includes marketplace facilitators, whether making
38 sales in their own right or facilitating sales on behalf of
39 marketplace sellers.

40 (b)(i) "Seller" does not include:

1 (~~(i)~~) (A) The state and its departments and institutions when
2 making sales to the state and its departments and institutions; or

3 (~~(ii)~~) (B) A professional employer organization when a covered
4 employee coemployed with the client under the terms of a professional
5 employer agreement engages in activities that constitute a sale at
6 retail that is subject to the tax imposed by this chapter. In such
7 cases, the client, and not the professional employer organization, is
8 deemed to be the seller and is responsible for collecting and
9 remitting the tax imposed by this chapter.

10 (~~(b)~~) (ii) For the purposes of (~~(a)–(f)~~) this subsection
11 (2)(b), the terms "client," "covered employee," "professional
12 employer agreement," and "professional employer organization" have
13 the same meanings as in RCW 82.04.540;

14 (3) "Buyer," "purchaser," and "consumer" include, without
15 limiting the scope hereof, every individual, receiver, assignee,
16 trustee in bankruptcy, trust, estate, firm, copartnership, joint
17 venture, club, company, joint stock company, business trust,
18 corporation, association, society, or any group of individuals acting
19 as a unit, whether mutual, cooperative, fraternal, nonprofit, or
20 otherwise, municipal corporation, quasi municipal corporation, and
21 also the state, its departments and institutions and all political
22 subdivisions thereof, irrespective of the nature of the activities
23 engaged in or functions performed, and also the United States or any
24 instrumentality thereof;

25 (4) "Delivery charges" means charges by the seller of personal
26 property or services for preparation and delivery to a location
27 designated by the purchaser of personal property or services
28 including, but not limited to, transportation, shipping, postage,
29 handling, crating, and packing;

30 (5) "Direct mail" means printed material delivered or distributed
31 by United States mail or other delivery service to a mass audience or
32 to addressees on a mailing list provided by the purchaser or at the
33 direction of the purchaser when the cost of the items are not billed
34 directly to the recipients. "Direct mail" includes tangible personal
35 property supplied directly or indirectly by the purchaser to the
36 direct mail seller for inclusion in the package containing the
37 printed material. "Direct mail" does not include multiple items of
38 printed material delivered to a single address;

39 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax
40 year," "taxable year," "person," "company," "sale," "sale at

1 wholesale," "wholesale," "business," "engaging in business," "cash
2 discount," "successor," "consumer," "in this state," "within this
3 state," "marijuana," "useable marijuana," and "marijuana-infused
4 products" applies equally to the provisions of this chapter;

5 (7) For the purposes of the taxes imposed under this chapter and
6 under chapter 82.12 RCW, "tangible personal property" means personal
7 property that can be seen, weighed, measured, felt, or touched, or
8 that is in any other manner perceptible to the senses. Tangible
9 personal property includes electricity, water, gas, steam, and
10 prewritten computer software;

11 (8) "Extended warranty" has the same meaning as in RCW
12 82.04.050(7);

13 (9) The definitions in RCW 82.04.192 apply to this chapter;

14 (10) For the purposes of the taxes imposed under this chapter and
15 chapter 82.12 RCW, whenever the terms "property" or "personal
16 property" are used, those terms must be construed to include digital
17 goods and digital codes unless:

18 (a) It is clear from the context that the term "personal
19 property" is intended only to refer to tangible personal property;

20 (b) It is clear from the context that the term "property" is
21 intended only to refer to tangible personal property, real property,
22 or both; or

23 (c) To construe the term "property" or "personal property" as
24 including digital goods and digital codes would yield unlikely,
25 absurd, or strained consequences; and

26 (11) "Retail sale" or "sale at retail" means any sale, lease, or
27 rental for any purpose other than for resale, sublease, or subrent.

28 (12) The terms "agriculture," "farming," "horticulture,"
29 "horticultural," and "horticultural product" may not be construed to
30 include or relate to marijuana, useable marijuana, or marijuana-
31 infused products unless the applicable term is explicitly defined to
32 include marijuana, useable marijuana, or marijuana-infused products.

33 (13)(a) "Affiliated person" means a person that, with respect to
34 another person:

35 (i) Has an ownership interest of more than five percent, whether
36 direct or indirect, in the other person; or

37 (ii) Is related to the other person because a third person, or
38 group of third persons who are affiliated persons with respect to
39 each other, holds an ownership interest of more than five percent,
40 whether direct or indirect, in the related persons.

1 (b) For purposes of this subsection (13):

2 (i) "Ownership interest" means the possession of equity in the
3 capital, the stock, or the profits of the other person; and

4 (ii) An indirect ownership interest in a person is an ownership
5 interest in an entity that has an ownership interest in the person or
6 in an entity that has an indirect ownership interest in the person.

7 (14) "Marketplace" means a physical or electronic place,
8 including, but not limited to, a store, a booth, an internet web
9 site, a catalog or a dedicated sales software application, where
10 tangible personal property, digital codes and digital products, or
11 services are offered for sale.

12 (15)(a) "Marketplace facilitator" means a person that:

13 (i) Contracts with sellers to facilitate for consideration,
14 regardless of whether deducted as fees from the transaction, the sale
15 of the seller's products through a marketplace owned or operated by
16 the person;

17 (ii) Engages directly or indirectly, through one or more
18 affiliated persons, in transmitting or otherwise communicating the
19 offer or acceptance between the buyer and seller. For purposes of
20 this subsection, mere advertising does not constitute transmitting or
21 otherwise communicating the offer or acceptance between the buyer and
22 seller; and

23 (iii) Engages directly or indirectly, through one or more
24 affiliated persons, in any of the following activities with respect
25 to the seller's products:

26 (A) Payment processing services;

27 (B) Fulfillment or storage services;

28 (C) Listing products for sale;

29 (D) Setting prices;

30 (E) Branding sales as those of the marketplace facilitator;

31 (F) Taking orders; or

32 (G) Providing customer service or accepting or assisting with
33 returns or exchanges.

34 (b)(i) "Marketplace facilitator" does not include:

35 (A) A person who provides internet advertising services,
36 including listing products for sale, so long as the person does not
37 also engage in the activity described in (a)(ii) of this subsection
38 (15) in addition to any of the activities described in (a)(iii) of
39 this subsection (15); or

1 (B) A person with respect to the provision of travel agency
2 services or the operation of a marketplace or that portion of a
3 marketplace that enables consumers to purchase transient lodging
4 accommodations in a hotel or other commercial transient lodging
5 facility.

6 (ii) The exclusion in this subsection (15)(b) does not apply to a
7 marketplace or that portion of a marketplace that facilitates the
8 retail sale of transient lodging accommodations in homes, apartments,
9 cabins, or other residential dwelling units.

10 (iii) For purposes of this subsection (15)(b), the following
11 definitions apply:

12 (A) "Hotel" has the same meaning as in RCW 19.48.010.

13 (B) "Travel agency services" means arranging or booking, for a
14 commission, fee or other consideration, vacation or travel packages,
15 rental car or other travel reservations or accommodations, tickets
16 for domestic or foreign travel by air, rail, ship, bus, or other
17 medium of transportation, or hotel or other lodging accommodations.

18 (16) "Marketplace seller" means a seller that makes retail sales
19 through any marketplace operated by a marketplace facilitator,
20 regardless of whether the seller is required to be registered with
21 the department under RCW 82.32.030.

22 (17) "Remote seller" means any seller, including a marketplace
23 facilitator, who does not have a physical presence in this state and
24 makes retail sales to purchasers or facilitates retail sales on
25 behalf of marketplace sellers.

26 **Sec. 106.** RCW 82.08.052 and 2015 3rd sp.s. c 5 s 202 are each
27 amended to read as follows:

28 ~~(1) ((For purposes of this chapter, a remote seller is presumed~~
29 ~~to have a substantial nexus with this state and is obligated to~~
30 ~~collect retail sales tax if the remote seller enters into an~~
31 ~~agreement with a resident of this state under which the resident, for~~
32 ~~a commission or other consideration, directly or indirectly refers~~
33 ~~potential customers, whether by a link on an internet web site or~~
34 ~~otherwise, to the remote seller, if the cumulative gross receipts~~
35 ~~from sales by the remote seller to customers in this state who are~~
36 ~~referred to the remote seller by all residents with this type of an~~
37 ~~agreement with the remote seller exceed ten thousand dollars during~~
38 ~~the preceding calendar year. This presumption may be rebutted by~~
39 ~~proof that the resident with whom the remote seller has an agreement~~

1 ~~did not engage in any solicitation in this state on behalf of the~~
2 ~~remote seller that would satisfy the nexus requirement of the United~~
3 ~~States Constitution during the calendar year in question. Proof may~~
4 ~~be shown by (a) establishing, in a manner acceptable to the~~
5 ~~department, that (i) each in-state person with whom the remote seller~~
6 ~~has an agreement is prohibited from engaging in any solicitation~~
7 ~~activities in this state that refer potential customers to the remote~~
8 ~~seller, and (ii) such in-state person or persons have complied with~~
9 ~~that prohibition; or (b) any other means as may be approved by the~~
10 ~~department.~~

11 ~~(2) "Remote seller" means a seller that makes retail sales in~~
12 ~~this state through one or more agreements described in subsection (1)~~
13 ~~of this section, and the seller's other physical presence in this~~
14 ~~state, if any, is not sufficient to establish a retail sales or use~~
15 ~~tax collection obligation under the commerce clause of the United~~
16 ~~States Constitution.~~

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

19 ~~(4)) (a) From October 1, 2018, through December 31, 2019, a~~
20 ~~seller is obligated to collect and remit to the department the taxes~~
21 ~~imposed under this chapter, except as otherwise provided in RCW~~
22 ~~82.08.0531(2) and this subsection, if the seller, in the current or~~
23 ~~immediately preceding calendar year, had:~~

24 ~~(i) More than one hundred thousand dollars of cumulative gross~~
25 ~~receipts from this state;~~

26 ~~(ii) Subject to the limitation in (c)(ii) of this subsection (1),~~
27 ~~two hundred or more separate transactions for the delivery of~~
28 ~~products into this state; or~~

29 ~~(iii) Subject to the limitation in RCW 82.32.531, physical~~
30 ~~presence in this state under RCW 82.04.067.~~

31 ~~(b) Cumulative gross receipts counting toward the threshold in~~
32 ~~(a)(i) of this subsection include a person's gross income of the~~
33 ~~business from all retail sales made by the seller and sourced to this~~
34 ~~state under RCW 82.32.730.~~

35 ~~(c)(i) Transactions counting toward the threshold in (a)(ii) of~~
36 ~~this subsection include all retail sales transactions made by the~~
37 ~~seller and sourced to this state under RCW 82.32.730.~~

38 ~~(ii) From the effective date of this section, a seller is~~
39 ~~relieved of the obligation to collect the taxes imposed under this~~

1 chapter and remit those taxes to the department if that obligation
2 arose solely based on the threshold in (a)(ii) of this subsection.

3 (iii) For purposes of the threshold in (a)(ii) of this subsection
4 "transaction" means an agreement to furnish a product or products for
5 consideration, and includes a sale as defined in RCW 82.04.040.

6 (iv) The term "transaction" does not include an agreement if the
7 agreement is canceled or rescinded before any of the products are
8 delivered to the buyer or other recipient designated by the buyer,
9 the seller retains no part of the consideration from the buyer, and
10 the seller did not collect from the buyer any tax imposed or
11 authorized under this title.

12 (v) With regard to agreements requiring multiple payments by the
13 consumer, such as a lease, rental, or installment sale, such
14 agreements count as a single transaction for purposes of this
15 subsection, regardless of the number of payments required under the
16 agreement. However, any modification of such an agreement that
17 provides for additional payments is counted as an additional
18 transaction.

19 (d)(i) Subject to (b) and (c) of this subsection (1), for a
20 marketplace facilitator, receipts and transactions counting toward
21 the thresholds in (a)(i) and (ii) of this subsection include, in
22 addition to the cumulative gross receipts and separate transactions
23 of its own sales, the cumulative gross receipts and separate
24 transactions from sales by all marketplace sellers through the
25 marketplace facilitator's marketplace, including marketplace sellers
26 that are not obligated to collect the taxes under this chapter
27 pursuant to the provisions of this section.

28 (ii) For a purchase made by one consumer through a marketplace
29 facilitator, where the purchase involves sales by multiple
30 marketplace sellers, the purchase is deemed to be one transaction for
31 the marketplace facilitator and one transaction apiece for each
32 marketplace seller.

33 (2) Beginning January 1, 2020, a seller with a substantial nexus
34 with this state under RCW 82.04.067 is obligated to collect and remit
35 to the department the taxes imposed under this chapter.

36 (3)(a) For purposes of this section, the following definitions
37 apply:

38 (i) "Apportionable income" has the same meaning as provided in
39 RCW 82.04.460.

1 (ii) "Gross income of the business" has the same meaning as
2 provided in RCW 82.04.080.

3 (iii) "Product" has the same meaning as provided in RCW
4 82.32.023.

5 (b) The definitions in RCW 82.13.010 apply to this section
6 through June 30, 2019.

7 (4)(a) A seller whose obligation to collect the taxes imposed
8 under this chapter arises after October 1, 2018, must begin
9 collecting taxes imposed under this chapter as follows:

10 (i) For a remote seller, on the first day of the first calendar
11 month that is at least thirty days from the date that the remote
12 seller becomes required under subsection (1) or (2) of this section
13 to collect the taxes imposed under this chapter.

14 (ii) For a seller that has a physical presence in this state,
15 immediately upon establishing a tax collection obligation under
16 subsection (1)(a)(iii) or (2) of this section.

17 (b) Nothing in this subsection (4) affects the ongoing tax
18 collection obligation of any seller that was required, or elected, to
19 collect the taxes imposed under this chapter on or before October 1,
20 2018.

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

22 NEW SECTION. Sec. 107. A new section is added to chapter 82.02
23 RCW to read as follows:

24 A seller that is obligated to collect the taxes imposed under
25 chapter 82.08 RCW must also collect all other applicable taxes and
26 fees in effect as of the effective date of this section, or enacted
27 after December 31, 2018. For purposes of this section, "taxes and
28 fees" means any monetary exaction, regardless of its label, imposed
29 on a buyer and that the seller is required to collect and pay over to
30 the department.

Part II

Marketplace Facilitators

33 **Sec. 201.** RCW 82.08.0531 and 2017 3rd sp.s. c 28 s 203 are each
34 amended to read as follows:

35 (1) ~~((a))~~ For purposes of this chapter and chapters 82.04 and
36 82.12 RCW, a marketplace facilitator ~~((or referrer))~~ is deemed to be
37 an agent of any marketplace seller making retail sales through the

1 marketplace facilitator's (~~physical or electronic~~) marketplace (~~or~~
2 ~~directly resulting from a referral of the purchaser by the~~
3 ~~referrer~~).

4 ~~((b))~~ (2) Beginning October 1, 2018, marketplace facilitators
5 subject to a tax collection obligation under RCW 82.08.052 (1) or (2)
6 must collect and remit to the department retail sales tax on all
7 taxable retail sales made or facilitated by the marketplace
8 facilitator, whether in its own right or as an agent of a marketplace
9 seller, regardless of whether the marketplace seller is subject to a
10 tax collection obligation under RCW 82.08.052 (1) or (2). Beginning
11 January 1, 2020, the collection obligation of a marketplace
12 facilitator under this chapter also applies to any other taxes and
13 fees, as defined under section 107 of this act, that are imposed on a
14 retail sale made or facilitated by the marketplace facilitator,
15 whether in its own right or as an agent of a marketplace seller,
16 regardless of whether the marketplace seller has a tax collection
17 obligation under RCW 82.08.052 (1) or (2).

18 (3) In addition to other applicable recordkeeping requirements,
19 the department may require a marketplace facilitator (~~or referrer~~)
20 to provide or make available to the department any information the
21 department determines is reasonably necessary to enforce the
22 provisions of this chapter and chapter 82.13 RCW. Such information
23 may include documentation of sales made by marketplace sellers
24 through the marketplace facilitator's (~~physical or electronic~~)
25 marketplace (~~or directly resulting from a referral by the~~
26 referrer). The department may prescribe by rule the form and manner
27 for providing this information.

28 ~~((2))~~ (4)(a) Beginning July 1, 2019, to ensure that marketplace
29 sellers have the necessary information to timely and accurately file
30 their excise tax returns with the department pursuant to RCW
31 82.32.045, a marketplace facilitator must, at a minimum, provide each
32 of its marketplace sellers with access, through a written report or
33 other means, to gross sales information for all Washington sales made
34 as an agent of the marketplace seller under this section during the
35 immediately preceding month. Marketplace facilitators must provide
36 such access within fifteen calendar days following the end of each
37 month.

38 (b) If a marketplace seller does not receive the gross sales
39 information for all Washington sales through a marketplace
40 facilitator, as required under (a) of this subsection (4), the

1 marketplace seller may determine its business and occupation tax
2 liability under chapter 82.04 RCW based on a reasonable method of
3 estimating Washington sales as may be required or approved by the
4 department.

5 (c) For purposes of this subsection, "Washington sales" means any
6 sale sourced to this state under RCW 82.32.730, regardless of whether
7 the sale is a retail sale.

8 (5) If a marketplace facilitator (~~or referrer~~) has fully
9 complied with the requirements of subsection (4)(a) of this section,
10 the marketplace facilitator is relieved of liability under this
11 chapter and chapter 82.12 RCW for failure to collect the correct
12 amount of tax to the extent that the marketplace facilitator (~~or~~
13 ~~referrer~~) can show to the department's satisfaction that the error
14 was due to incorrect information given to the marketplace facilitator
15 (~~or referrer~~) by the marketplace seller, unless the marketplace
16 facilitator(~~(, or referrer,)~~) and marketplace seller are affiliated
17 persons. Where the marketplace facilitator (~~or referrer~~) is
18 relieved of liability under this subsection (~~((2))~~) (5), the
19 marketplace seller is solely liable for the amount of uncollected tax
20 due.

21 ~~((3))~~ (6)(a) Subject to the limits in (b) and (c) of this
22 subsection ~~((3))~~ (6), a marketplace facilitator (~~or referrer~~)
23 that has fully complied with the requirements of subsection (4)(a) of
24 this section is relieved of liability under this chapter and chapter
25 82.12 RCW for the failure to collect tax on taxable retail sales to
26 the extent that the marketplace facilitator (~~or referrer~~) can show
27 to the department's satisfaction that:

28 (i) The taxable retail sale was made through the marketplace
29 facilitator's marketplace (~~or directly resulting from a referral of~~
30 ~~the purchaser by the referrer~~);

31 (ii) The taxable retail sale was made solely as the agent of a
32 marketplace seller, and the marketplace facilitator(~~(, or referrer,)~~)
33 and marketplace seller are not affiliated persons; and

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

36 (b) Liability relief for a marketplace facilitator under (a) of
37 this subsection ~~((3))~~ (6) for a calendar year is limited as
38 follows:

39 (i) For calendar year 2018, the liability relief may not exceed
40 ten percent of the total tax due under this chapter and chapter 82.12

1 RCW on taxable retail sales facilitated by the marketplace
2 facilitator as agent of a marketplace seller and sourced to this
3 state under RCW 82.32.730 during the same calendar year.

4 (ii) For calendar year((s)) 2019(~~(, 2020, 2021, 2022, and 2023)~~),
5 the liability relief may not exceed five percent of the total tax due
6 under this chapter and chapter 82.12 RCW on taxable retail sales by
7 the marketplace facilitator as agent of a marketplace seller and
8 sourced to this state under RCW 82.32.730 during the same calendar
9 year.

10 ~~(iii) ((Beginning in calendar year 2024, the liability relief may
11 not exceed three percent of the total tax due under this chapter and
12 chapter 82.12 RCW on taxable retail sales by the marketplace
13 facilitator as agent of a marketplace seller and sourced to this
14 state under RCW 82.32.730 during the same calendar year.~~

15 ~~(c) Liability relief for a referrer under (a) of this subsection
16 (3) for a calendar year is limited as follows:~~

17 ~~(i) For calendar year 2018, the liability relief may not exceed
18 ten percent of the total tax due under this chapter and chapter 82.12
19 RCW on taxable retail sales directly resulting from a referral of the
20 purchaser to the marketplace seller by the referrer and sourced to
21 this state under RCW 82.32.730 during the same calendar year.~~

22 ~~(ii) For calendar years 2019, 2020, 2021, 2022, and 2023, the
23 liability relief may not exceed five percent of the total tax due
24 under this chapter and chapter 82.12 RCW on taxable retail sales
25 directly resulting from a referral of the purchaser to the
26 marketplace seller by the referrer and sourced to this state under
27 RCW 82.32.730 during the same calendar year.~~

28 ~~(iii) Beginning in calendar year 2024, the liability relief may
29 not exceed three percent of the total tax due under this chapter and
30 chapter 82.12 RCW on taxable retail sales directly resulting from a
31 referral of the purchaser to the marketplace seller by the referrer
32 and sourced to this state under RCW 82.32.730 during the same
33 calendar year.) The provisions of this subsection (6) do not apply
34 to retail sales made after December 31, 2019.~~

35 (c) For purposes of this subsection (6), a retail sale is deemed
36 to be facilitated by a marketplace facilitator when the marketplace
37 facilitator either:

38 (i) Accepts the order for the product;

39 (ii) Communicates to the marketplace seller the buyer's offer to
40 purchase the product;

- 1 (iii) Accepts the buyer's payment for the product; or
2 (iv) Delivers or arranges for delivery of the product.

3 (d) Where the marketplace facilitator or referrer is relieved of
4 liability under this subsection ~~((+3))~~ (6), the marketplace seller
5 is also relieved of liability for the amount of uncollected tax due,
6 subject to the limitations in subsection ~~((+4))~~ (7) of this section.

7 (e) The department may by rule determine the manner in which a
8 taxpayer may claim the liability relief provided under this
9 subsection.

10 ~~((+4))~~ (7) Except as otherwise provided in this section, a
11 marketplace seller obligated ~~((or electing))~~ to collect the taxes
12 imposed under this chapter and chapter 82.12 RCW is not required to
13 collect such taxes on all taxable retail sales through a marketplace
14 operated by a marketplace facilitator ~~((or directly resulting from a~~
15 ~~referral of the purchaser to the marketplace seller by the referrer))~~
16 if the marketplace seller has obtained documentation from the
17 marketplace facilitator ~~((or referrer))~~ indicating that the
18 marketplace facilitator ~~((or referrer))~~ is registered with the
19 department and will collect all applicable taxes due under this
20 chapter and chapter 82.12 RCW on all taxable retail sales made on
21 behalf of the marketplace seller through the marketplace operated by
22 the marketplace facilitator ~~((or taxable retail sales directly~~
23 ~~resulting from a referral of the purchaser to the marketplace seller~~
24 ~~by the referrer))~~. The documentation required by this subsection
25 ~~((+4))~~ (7) must be provided in a form and manner prescribed by or
26 acceptable to the department. This subsection ~~((+4))~~ (7) does not
27 relieve a marketplace seller from liability for uncollected taxes due
28 under this chapter or chapter 82.12 RCW resulting from a marketplace
29 facilitator's ~~((or referrer's))~~ failure to collect the proper amount
30 of tax due when the error was due to incorrect information given to
31 the marketplace facilitator ~~((or referrer))~~ by the marketplace
32 seller.

33 ~~((+5) Except as otherwise provided in this section, a marketplace~~
34 ~~seller that is also a remote seller subject to RCW 82.08.053(1) is~~
35 ~~relieved of its obligation to collect sales or use taxes imposed~~
36 ~~under RCW 82.08.053 with respect to all taxable retail sales through~~
37 ~~a marketplace operated by a marketplace facilitator that provides the~~
38 ~~marketplace seller with written confirmation that the marketplace~~
39 ~~facilitator has elected to comply with the notice and reporting~~

1 requirements of RCW 82.13.020 in lieu of collecting sales and use
2 taxes.

3 ~~(6) Notwithstanding subsections (4) and (5) of this section, a~~
4 ~~marketplace seller is not relieved of the obligation to collect taxes~~
5 ~~imposed under this chapter and chapter 82.12 RCW or comply with RCW~~
6 ~~82.08.053 with respect to retail sales of digital products and~~
7 ~~digital codes, other than (a) specified digital products and digital~~
8 ~~games and (b) digital codes used to redeem specified digital products~~
9 ~~and digital games, until January 1, 2020.~~

10 ~~(7))~~ (8) No class action may be brought against a marketplace
11 facilitator (~~or referrer~~) in any court of this state on behalf of
12 purchasers arising from or in any way related to an overpayment of
13 sales or use tax collected by the marketplace facilitator (~~or~~
14 ~~referrer~~), regardless of whether that claim is characterized as a
15 tax refund claim. Nothing in this subsection affects a purchaser's
16 right to seek a refund from the department as provided under chapter
17 82.32 RCW.

18 ~~((8))~~ (9) Nothing in this section affects the obligation of any
19 purchaser to remit sales or use tax and any other applicable taxes
20 and fees, as to any applicable taxable transaction in which the
21 seller or the seller's agent does not collect and remit sales tax.

22 ~~((9) This section is subject to the provisions of RCW 82.32.733.~~

23 ~~(10) The definitions in RCW 82.13.010 apply to this section.)~~

24 Part III

25 Repealing and Modifying Conflicting and Unnecessary Laws

26 NEW SECTION. **Sec. 301.** The following acts or parts of acts are
27 each repealed:

28 (1) RCW 82.08.053 (Remote sellers, referrers, and marketplace
29 facilitators—Tax collection and remittance) and 2017 3rd sp.s. c 28 s
30 202;

31 (2) RCW 82.13.010 (Definitions) and 2017 3rd sp.s. c 28 s 204;

32 (3) RCW 82.13.020 (Notice and reporting requirements) and 2017
33 3rd sp.s. c 28 s 205;

34 (4) RCW 82.13.030 (Penalties) and 2017 3rd sp.s. c 28 s 206;

35 (5) RCW 82.13.040 (Administration of chapter) and 2017 3rd sp.s.
36 c 28 s 207;

37 (6) RCW 82.13.050 (Liability, administration, and enforcement
38 under chapters 82.08 and 82.12 RCW) and 2017 3rd sp.s. c 28 s 208;

1 (7) RCW 82.32.047 (Taxes—Payable by consumer directly to
2 department—When due) and 2017 3rd sp.s. c 28 s 209;

3 (8) RCW 82.32.733 (Changes in federal law or the streamlined
4 sales and use tax agreement after July 7, 2017—Conflicts) and 2017
5 3rd sp.s. c 28 s 214; and

6 (9) RCW 82.32.763 (Remote seller, referrer, and marketplace
7 facilitator—Recovery procedures—Liability) and 2017 3rd sp.s. c 28 s
8 210.

9 **Sec. 302.** RCW 82.32.045 and 2010 1st sp.s. c 23 s 1103 are each
10 amended to read as follows:

11 (1) Except as otherwise provided in this chapter and subsection
12 (5) of this section, payments of the taxes imposed under chapters
13 82.04, 82.08, 82.12, 82.14, and 82.16 RCW, along with reports and
14 returns on forms prescribed by the department, are due monthly within
15 twenty-five days after the end of the month in which the taxable
16 activities occur.

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

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

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

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

32 (i) Twenty-eight thousand dollars per year; or

33 (ii) Forty-six thousand six hundred sixty-seven dollars per year
34 for persons generating at least fifty percent of their taxable amount
35 from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and
36 82.04.285;

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

4 (c) The person is not required to collect or pay to the
5 department of revenue any other tax or fee which the department is
6 authorized to collect.

7 (5) (a) Taxes imposed under chapter 82.08 or 82.12 RCW on taxable
8 events that occur beginning January 1, 2019, through June 30, 2019,
9 and payable by a consumer directly to the department are due, on
10 returns prescribed by the department, by July 25, 2019.

11 (b) This subsection (5) does not apply to the reporting and
12 payment of taxes imposed under chapters 82.08 and 82.12 RCW:

13 (i) On the retail sale or use of motor vehicles, vessels, or
14 aircraft; or

15 (ii) By consumers who are engaged in business, unless the
16 department has relieved the consumer of the requirement to file
17 returns pursuant to subsection (4) of this section.

18 Part IV

19 Ensuring Continuing Compliance with the Streamlined Sales & Use Tax 20 Agreement and Addressing Potential Federal Preemption

21 **Sec. 401.** RCW 82.08.0293 and 2017 3rd sp.s. c 28 s 101 are each
22 amended to read as follows:

23 (1) The tax levied by RCW 82.08.020 does not apply to sales of
24 food and food ingredients. "Food and food ingredients" means
25 substances, whether in liquid, concentrated, solid, frozen, dried, or
26 dehydrated form, that are sold for ingestion or chewing by humans and
27 are consumed for their taste or nutritional value. "Food and food
28 ingredients" does not include:

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

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

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

35 (2) The exemption of "food and food ingredients" provided for in
36 subsection (1) of this section does not apply to prepared food, soft
37 drinks, bottled water, or dietary supplements. The definitions in

1 this subsection apply throughout this section unless the context
2 clearly requires otherwise.

3 (a) "Bottled water" means water that is placed in a safety sealed
4 container or package for human consumption. Bottled water is calorie
5 free and does not contain sweeteners or other additives except that
6 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
7 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
8 (vi) preservatives; and (vii) only those flavors, extracts, or
9 essences derived from a spice or fruit. "Bottled water" includes
10 water that is delivered to the buyer in a reusable container that is
11 not sold with the water.

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

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

15 (A) A vitamin;

16 (B) A mineral;

17 (C) An herb or other botanical;

18 (D) An amino acid;

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

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

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

27 (iii) Is required to be labeled as a dietary supplement,
28 identifiable by the "supplement facts" box found on the label as
29 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered
30 as of January 1, 2003.

31 (c) (i) "Prepared food" means:

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

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

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

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

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

7 (ii) Food is "sold with eating utensils provided by the seller"
8 if:

9 (A) The seller's customary practice for that item is to
10 physically deliver or hand a utensil to the customer with the food or
11 food ingredient as part of the sales transaction. If the food or food
12 ingredient is prepackaged with a utensil, the seller is considered to
13 have physically delivered a utensil to the customer unless the food
14 and utensil are prepackaged together by a food manufacturer
15 classified under sector 311 of the North American industry
16 classification system (NAICS);

17 (B) A plate, glass, cup, or bowl is necessary to receive the food
18 or food ingredient, and the seller makes those utensils available to
19 its customers; or

20 (C) (I) The seller makes utensils available to its customers, and
21 the seller has more than seventy-five percent prepared food sales.
22 For purposes of this subsection (2)(c)(ii)(C), a seller has more than
23 seventy-five percent prepared food sales if the seller's gross retail
24 sales of prepared food under (c)(i)(A), (c)(i)(C), and (c)(ii)(B) of
25 this subsection equal more than seventy-five percent of the seller's
26 gross retail sales of all food and food ingredients, including
27 prepared food, soft drinks, and dietary supplements.

28 (II) However, even if a seller has more than seventy-five percent
29 prepared food sales, four servings or more of food or food
30 ingredients packaged for sale as a single item and sold for a single
31 price are not "sold with utensils provided by the seller" unless the
32 seller's customary practice for the package is to physically hand or
33 otherwise deliver a utensil to the customer as part of the sales
34 transaction. Whenever available, the number of servings included in a
35 package of food or food ingredients must be determined based on the
36 manufacturer's product label. If no label is available, the seller
37 must reasonably determine the number of servings.

38 (III) The seller must determine a single prepared food sales
39 percentage annually for all the seller's establishments in the state
40 based on the prior year of sales. The seller may elect to determine

1 its prepared food sales percentage based either on the prior calendar
2 year or on the prior fiscal year. A seller may not change its elected
3 method for determining its prepared food percentage without the
4 written consent of the department. The seller must determine its
5 annual prepared food sales percentage as soon as possible after
6 accounting records are available, but in no event later than ninety
7 days after the beginning of the seller's calendar or fiscal year. A
8 seller may make a good faith estimate of its first annual prepared
9 food sales percentage if the seller's records for the prior year are
10 not sufficient to allow the seller to calculate the prepared food
11 sales percentage. The seller must adjust its good faith estimate
12 prospectively if its relative sales of prepared foods in the first
13 ninety days of operation materially depart from the seller's
14 estimate.

15 (iii) "Prepared food" does not include the following (~~food or~~
16 food ingredients, if the food or food ingredients are)) items, if
17 sold without eating utensils provided by the seller:

18 (A) Food sold by a seller whose proper primary (~~North American~~
19 ~~industry classification system~~(-)) NAICS(+)) classification is
20 manufacturing in sector 311, except subsector 3118 (bakeries), as
21 provided in the "North American industry classification system—United
22 States, 2002";

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

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

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

33 (3) Notwithstanding anything in this section to the contrary, the
34 exemption of "food and food ingredients" provided in this section
35 applies to food and food ingredients that are furnished, prepared, or
36 served as meals:

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

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

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

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

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

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

20 (4)(a) Subsection (1) of this section notwithstanding, the retail
21 sale of food and food ingredients is subject to sales tax under RCW
22 82.08.020 if the food and food ingredients are sold through a vending
23 machine. Except as provided in (b) of this subsection, the selling
24 price of food and food ingredients sold through a vending machine for
25 purposes of RCW 82.08.020 is fifty-seven percent of the gross
26 receipts.

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

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

35 **Sec. 402.** RCW 82.32.020 and 2015 c 86 s 309 are each amended to
36 read as follows:

37 For the purposes of this chapter:

38 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to
39 the words and phrases "tax year," "taxable year," "person,"

1 "company," "gross proceeds of sales," "gross income of the business,"
2 "business," "engaging in business," "successor," "gross operating
3 revenue," "gross income," "taxpayer," "retail sale," "seller,"
4 "buyer," "purchaser," "extended warranty," and "value of products"
5 apply equally to the provisions of this chapter.

6 (2) Unless the context clearly requires otherwise, the term "tax"
7 includes any monetary exaction, regardless of its label, that the
8 department is responsible for collecting, but not including interest,
9 penalties, the surcharge imposed in RCW 40.14.027, or fees incurred
10 by the department and recouped from taxpayers.

11 (3) Whenever "property" or "personal property" is used, those
12 terms must be construed to include digital goods and digital codes
13 unless: (a) It is clear from the context that the term "personal
14 property" is intended only to refer to tangible personal property;
15 (b) it is clear from the context that the term "property" is intended
16 only to refer to tangible personal property, real property, or both;
17 or (c) to construe the term "property" or "personal property" as
18 including digital goods and digital codes would yield unlikely,
19 absurd, or strained consequences.

20 (4) The definitions in this subsection apply throughout this
21 chapter, unless the context clearly requires otherwise.

22 (a) "Agreement" means the streamlined sales and use tax
23 agreement.

24 (b) "Associate member" means a petitioning state that is found to
25 be in compliance with the agreement and changes to its laws, rules,
26 or other authorities necessary to bring it into compliance are not in
27 effect, but are scheduled to take effect on or before January 1,
28 2008. The petitioning states, by majority vote, may also grant
29 associate member status to a petitioning state that does not receive
30 an affirmative vote of three-fourths of the petitioning states upon a
31 finding that the state has achieved substantial compliance with the
32 terms of the agreement as a whole, but not necessarily each required
33 provision, measured qualitatively, and there is a reasonable
34 expectation that the state will achieve compliance by January 1,
35 2008.

36 (c) "Certified automated system" means software certified under
37 the agreement to calculate the tax imposed by each jurisdiction on a
38 transaction, determine the amount of tax to remit to the appropriate
39 state, and maintain a record of the transaction.

1 (d) "Certified service provider" means an agent certified under
2 the agreement to perform all of the seller's sales and use tax
3 functions, other than the seller's obligation to remit tax on its own
4 purchases.

5 (e) (i) "Member state" means a state that:

6 (A) Has petitioned for membership in the agreement and submitted
7 a certificate of compliance; and

8 (B) Before the effective date of the agreement, has been found to
9 be in compliance with the requirements of the agreement by an
10 affirmative vote of three-fourths of the other petitioning states; or

11 (C) After the effective date of the agreement, has been found to
12 be in compliance with the agreement by a three-fourths vote of the
13 entire governing board of the agreement.

14 (ii) Membership by reason of (e) (i) (A) and (B) of this subsection
15 is effective on the first day of a calendar quarter at least sixty
16 days after at least ten states comprising at least twenty percent of
17 the total population, as determined by the 2000 federal census, of
18 all states imposing a state sales tax have petitioned for membership
19 and have either been found in compliance with the agreement or have
20 been found to be an associate member under section 704 of the
21 agreement.

22 (iii) Membership by reason of (e) (i) (A) and (C) of this
23 subsection is effective on the state's proposed date of entry or the
24 first day of the calendar quarter after its petition is approved by
25 the governing board, whichever is later, and is at least sixty days
26 after its petition is approved.

27 (f) "Model 1 seller" means a seller that has selected a certified
28 service provider as its agent to perform all the seller's sales and
29 use tax functions as outlined in the contract between the streamlined
30 sales tax governing board and the certified service provider, other
31 than the seller's obligation to remit tax on its own purchases.

32 (g) "Model 2 seller" means a seller that has selected a certified
33 automated system to perform part of its sales and use tax functions,
34 but retains responsibility for remitting the tax.

35 (h) "Model 3 seller" means a seller that has sales in at least
36 five member states, has total annual sales revenue of at least five
37 hundred million dollars, has a proprietary system that calculates the
38 amount of tax due each jurisdiction, and has entered into a
39 performance agreement with the member states that establishes a tax
40 performance standard for the seller. As used in this subsection

1 (4) (h), a seller includes an affiliated group of sellers using the
2 same proprietary system.

3 (i) "Source" means the location in which the sale or use of
4 tangible personal property, a digital good or digital code, an
5 extended warranty, or a digital automated service or other service,
6 subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is
7 deemed to occur.

8 **Sec. 403.** RCW 82.32.715 and 2007 c 6 s 301 are each amended to
9 read as follows:

10 (1) The department (~~shall~~) must adopt by rule monetary
11 allowances for certified service providers (~~(, model 2 sellers, and~~
12 ~~model 3 sellers and all other sellers that are not model 1 or)~~)
13 selected by model 1 sellers and also for model 2 sellers. The
14 department may be guided by the provisions for monetary allowances
15 adopted by the governing board of the agreement to determine the
16 amount of the allowances and the conditions under which they are
17 allowed. The monetary allowances must be reasonable and provide
18 adequate incentive for certified service providers and sellers to
19 collect and remit sales and use taxes under the agreement. Monetary
20 allowances will be funded solely from state sales and use taxes. The
21 department may modify its rules for monetary allowances in light of
22 the holding of the United States supreme court in *South Dakota v.*
23 *Wayfair, Inc.*, Docket No. 17-494, issued June 21, 2018.

24 (2) For certified service providers, the monetary allowance may
25 include a base rate that applies to taxable transactions processed by
26 the certified service provider. (~~Additionally, for a period not to~~
27 ~~exceed twenty-four months following a seller's registration under RCW~~
28 ~~82.32.030(3), the monetary allowance may include a percentage of tax~~
29 ~~revenue generated by the seller.))~~

30 (3) For model 2 sellers, the monetary allowance may include a
31 base rate and a percentage of revenue generated by a seller
32 registering under RCW 82.32.030(3), but (~~shall~~) may not exceed a
33 period of twenty-four months.

34 (~~(4) For model 3 sellers and all other sellers that are not~~
35 ~~model 1 sellers or model 2 sellers, the monetary allowance may~~
36 ~~include a percentage of tax revenue generated by a seller registering~~
37 ~~under RCW 82.32.030(3), but shall not exceed a period of twenty-four~~
38 ~~months.))~~

1 **Sec. 404.** RCW 82.32.762 and 2015 3rd sp.s. c 5 s 205 are each
2 amended to read as follows:

3 (1) If the department determines that a change, taking effect
4 after ~~((September 1, 2015))~~ the effective date of this section, in
5 the streamlined sales and use tax agreement or federal law creates a
6 conflict with any provision of ~~((RCW 82.08.052))~~ chapter . . . , Laws
7 of 2019 (this act), such conflicting provision or provisions of ~~((RCW~~
8 ~~82.08.052))~~ chapter . . . , Laws of 2019 (this act), including any
9 related provisions that would not function as originally intended,
10 have no further force and effect as of the date the change in the
11 streamlined sales and use tax agreement or federal law becomes
12 effective.

13 (2) For purposes of this section:

14 (a) A change in federal law conflicts with ~~((RCW 82.08.052))~~
15 chapter . . . , Laws of 2019 (this act) if the change ~~((clearly allows~~
16 ~~states to impose greater sales and use tax collection obligations on~~
17 ~~remote sellers than provided for, or))~~ clearly prevents states from
18 imposing sales and use tax collection obligations on remote sellers
19 to the extent provided for ~~((, under RCW 82.08.052))~~ under
20 chapter . . . , Laws of 2019 (this act).

21 (b) A change in the streamlined sales and use tax agreement
22 conflicts with ~~((RCW 82.08.052))~~ chapter . . . , Laws of 2019 (this
23 act) if one or more provisions of ~~((RCW 82.08.052))~~ chapter . . . ,
24 Laws of 2019 (this act) causes this state to be found out of
25 compliance with the streamlined sales and use tax agreement by its
26 governing board.

27 (3) (a) If the department makes a determination under this section
28 that a change in federal law or the streamlined sales and use tax
29 agreement conflicts with one or more provisions of ~~((RCW 82.08.052,~~
30 ~~the department))~~ chapter . . . , Laws of 2019 (this act):

31 ~~((a))~~ (i) For purposes of conflicts between the streamlined
32 sales and use tax agreement and chapter . . . , Laws of 2019 (this
33 act), the department may adopt rules in accordance with chapter 34.05
34 RCW, including emergency rules, that are consistent with the
35 streamlined sales and use tax agreement ~~((and that impose sales and~~
36 ~~use tax collection obligations on remote sellers to the fullest~~
37 ~~extent allowed under state and federal law)); and~~

38 ~~((b))~~ (ii) For purposes of conflicts between federal law and
39 chapter . . . , Laws of 2019 (this act), the department must, by rule

1 or rules adopted in accordance with chapter 34.05 RCW, including
2 emergency rules:

3 (A) Impose sales and use tax collection obligations and business
4 and occupation tax on remote sellers to the fullest extent allowed
5 under state and federal law, which may include adopting provisions
6 identical or substantially similar to those in sections 202 and
7 204(6)(c)(ii), chapter 5, Laws of 2015 3rd sp. sess.; and

8 (B) Implement election, notice, and reporting provisions
9 substantially similar to those in sections 202 through 207, chapter
10 28, Laws of 2017 3rd sp. sess. The department must impose such
11 election, notice, and reporting provisions only on remote sellers and
12 marketplace facilitators against whom the department is unable to
13 enforce a tax collection obligation as a result of a change in
14 federal law. The department must not impose election, notice, and
15 reporting provisions on referrers as defined in section 204, chapter
16 28, Laws of 2017 3rd sp. sess. The department must impose penalties
17 for failure to comply with notice or reporting requirements
18 consistent with those penalties imposed in section 206, chapter 28,
19 Laws of 2017 3rd sp. sess.

20 (b) For purposes of (a)(i) and (ii) of this subsection (3), the
21 department must include information on its web site informing
22 taxpayers and the public (i) of the provision or provisions of ((RCW
23 82.08.052)) chapter . . ., Laws of 2019 (this act) that will have no
24 further force and effect, (ii) when such change will become
25 effective, and (iii) about how to participate in any rule making
26 conducted by the department in accordance with (a)(i) and (ii) of
27 this subsection (3).

28 (4) For purposes of this section, "remote seller" ((has the same
29 meaning as in RCW 82.08.052)) and "marketplace facilitator" have the
30 same meaning as in RCW 82.13.010 through June 30, 2019, and RCW
31 82.08.010 beginning July 1, 2019.

32 **Sec. 405.** RCW 34.05.328 and 2018 c 207 s 8 are each amended to
33 read as follows:

34 (1) Before adopting a rule described in subsection (5) of this
35 section, an agency must:

36 (a) Clearly state in detail the general goals and specific
37 objectives of the statute that the rule implements;

38 (b) Determine that the rule is needed to achieve the general
39 goals and specific objectives stated under (a) of this subsection,

1 and analyze alternatives to rule making and the consequences of not
2 adopting the rule;

3 (c) Provide notification in the notice of proposed rule making
4 under RCW 34.05.320 that a preliminary cost-benefit analysis is
5 available. The preliminary cost-benefit analysis must fulfill the
6 requirements of the cost-benefit analysis under (d) of this
7 subsection. If the agency files a supplemental notice under RCW
8 34.05.340, the supplemental notice must include notification that a
9 revised preliminary cost-benefit analysis is available. A final cost-
10 benefit analysis must be available when the rule is adopted under RCW
11 34.05.360;

12 (d) Determine that the probable benefits of the rule are greater
13 than its probable costs, taking into account both the qualitative and
14 quantitative benefits and costs and the specific directives of the
15 statute being implemented;

16 (e) Determine, after considering alternative versions of the rule
17 and the analysis required under (b), (c), and (d) of this subsection,
18 that the rule being adopted is the least burdensome alternative for
19 those required to comply with it that will achieve the general goals
20 and specific objectives stated under (a) of this subsection;

21 (f) Determine that the rule does not require those to whom it
22 applies to take an action that violates requirements of another
23 federal or state law;

24 (g) Determine that the rule does not impose more stringent
25 performance requirements on private entities than on public entities
26 unless required to do so by federal or state law;

27 (h) Determine if the rule differs from any federal regulation or
28 statute applicable to the same activity or subject matter and, if so,
29 determine that the difference is justified by the following:

30 (i) A state statute that explicitly allows the agency to differ
31 from federal standards; or

32 (ii) Substantial evidence that the difference is necessary to
33 achieve the general goals and specific objectives stated under (a) of
34 this subsection; and

35 (i) Coordinate the rule, to the maximum extent practicable, with
36 other federal, state, and local laws applicable to the same activity
37 or subject matter.

38 (2) In making its determinations pursuant to subsection (1)(b)
39 through (h) of this section, the agency must place in the rule-making

1 file documentation of sufficient quantity and quality so as to
2 persuade a reasonable person that the determinations are justified.

3 (3) Before adopting rules described in subsection (5) of this
4 section, an agency must place in the rule-making file a rule
5 implementation plan for rules filed under each adopting order. The
6 plan must describe how the agency intends to:

7 (a) Implement and enforce the rule, including a description of
8 the resources the agency intends to use;

9 (b) Inform and educate affected persons about the rule;

10 (c) Promote and assist voluntary compliance; and

11 (d) Evaluate whether the rule achieves the purpose for which it
12 was adopted, including, to the maximum extent practicable, the use of
13 interim milestones to assess progress and the use of objectively
14 measurable outcomes.

15 (4) After adopting a rule described in subsection (5) of this
16 section regulating the same activity or subject matter as another
17 provision of federal or state law, an agency must do all of the
18 following:

19 (a) Coordinate implementation and enforcement of the rule with
20 the other federal and state entities regulating the same activity or
21 subject matter by making every effort to do one or more of the
22 following:

23 (i) Deferring to the other entity;

24 (ii) Designating a lead agency; or

25 (iii) Entering into an agreement with the other entities
26 specifying how the agency and entities will coordinate implementation
27 and enforcement.

28 If the agency is unable to comply with this subsection (4)(a),
29 the agency must report to the legislature pursuant to (b) of this
30 subsection;

31 (b) Report to the joint administrative rules review committee:

32 (i) The existence of any overlap or duplication of other federal
33 or state laws, any differences from federal law, and any known
34 overlap, duplication, or conflict with local laws; and

35 (ii) Make recommendations for any legislation that may be
36 necessary to eliminate or mitigate any adverse effects of such
37 overlap, duplication, or difference.

38 (5)(a) Except as provided in (b) of this subsection, this section
39 applies to:

1 (i) Significant legislative rules of the departments of ecology,
2 labor and industries, health, revenue, social and health services,
3 and natural resources, the employment security department, the forest
4 practices board, the office of the insurance commissioner, the state
5 building code council, and to the legislative rules of the department
6 of fish and wildlife implementing chapter 77.55 RCW; and

7 (ii) Any rule of any agency, if this section is voluntarily made
8 applicable to the rule by the agency, or is made applicable to the
9 rule by a majority vote of the joint administrative rules review
10 committee within forty-five days of receiving the notice of proposed
11 rule making under RCW 34.05.320.

12 (b) This section does not apply to:

13 (i) Emergency rules adopted under RCW 34.05.350;

14 (ii) Rules relating only to internal governmental operations that
15 are not subject to violation by a nongovernment party;

16 (iii) Rules adopting or incorporating by reference without
17 material change federal statutes or regulations, Washington state
18 statutes, rules of other Washington state agencies, shoreline master
19 programs other than those programs governing shorelines of statewide
20 significance, or, as referenced by Washington state law, national
21 consensus codes that generally establish industry standards, if the
22 material adopted or incorporated regulates the same subject matter
23 and conduct as the adopting or incorporating rule;

24 (iv) Rules that only correct typographical errors, make address
25 or name changes, or clarify language of a rule without changing its
26 effect;

27 (v) Rules the content of which is explicitly and specifically
28 dictated by statute, including any rules of the department of revenue
29 adopted under the authority of RCW 82.32.762(3);

30 (vi) Rules that set or adjust fees under the authority of RCW
31 19.02.075 or that set or adjust fees or rates pursuant to legislative
32 standards, including fees set or adjusted under the authority of RCW
33 19.80.045;

34 (vii) Rules of the department of social and health services
35 relating only to client medical or financial eligibility and rules
36 concerning liability for care of dependents; or

37 (viii) Rules of the department of revenue that adopt a uniform
38 expiration date for reseller permits as authorized in RCW 82.32.780
39 and 82.32.783.

40 (c) For purposes of this subsection:

1 (i) A "procedural rule" is a rule that adopts, amends, or repeals
2 (A) any procedure, practice, or requirement relating to any agency
3 hearings; (B) any filing or related process requirement for making
4 application to an agency for a license or permit; or (C) any policy
5 statement pertaining to the consistent internal operations of an
6 agency.

7 (ii) An "interpretive rule" is a rule, the violation of which
8 does not subject a person to a penalty or sanction, that sets forth
9 the agency's interpretation of statutory provisions it administers.

10 (iii) A "significant legislative rule" is a rule other than a
11 procedural or interpretive rule that (A) adopts substantive
12 provisions of law pursuant to delegated legislative authority, the
13 violation of which subjects a violator of such rule to a penalty or
14 sanction; (B) establishes, alters, or revokes any qualification or
15 standard for the issuance, suspension, or revocation of a license or
16 permit; or (C) adopts a new, or makes significant amendments to, a
17 policy or regulatory program.

18 (d) In the notice of proposed rule making under RCW 34.05.320, an
19 agency must state whether this section applies to the proposed rule
20 pursuant to (a)(i) of this subsection, or if the agency will apply
21 this section voluntarily.

22 (6) By January 31, 1996, and by January 31st of each even-
23 numbered year thereafter, the office of regulatory assistance, after
24 consulting with state agencies, counties, and cities, and business,
25 labor, and environmental organizations, must report to the governor
26 and the legislature regarding the effects of this section on the
27 regulatory system in this state. The report must document:

28 (a) The rules proposed to which this section applied and to the
29 extent possible, how compliance with this section affected the
30 substance of the rule, if any, that the agency ultimately adopted;

31 (b) The costs incurred by state agencies in complying with this
32 section;

33 (c) Any legal action maintained based upon the alleged failure of
34 any agency to comply with this section, the costs to the state of
35 such action, and the result;

36 (d) The extent to which this section has adversely affected the
37 capacity of agencies to fulfill their legislatively prescribed
38 mission;

39 (e) The extent to which this section has improved the
40 acceptability of state rules to those regulated; and

1 (f) Any other information considered by the office of financial
2 management to be useful in evaluating the effect of this section.

3 **Part V**

4 **Eliminating Unfair Tax Advantages for Foreign Marketplace Sellers and**
5 **Peer-to-Peer Car Rental Marketplace Facilitators**

6 **Sec. 501.** RCW 82.04.610 and 2007 c 477 s 2 are each amended to
7 read as follows:

8 (1) This chapter does not apply to:

9 (a) The sale of tangible personal property in (~~import or~~)
10 export commerce; and

11 (b) The wholesale sale of tangible personal property in import
12 commerce, but only when the wholesale sale is:

13 (i) A sale of unroasted coffee beans; or

14 (ii) Between a parent company and its wholly owned subsidiary.

15 (2) Tangible personal property is in import commerce while the
16 property is in the process of import transportation. Except as
17 provided in (a) through (c) of this subsection, property is in the
18 process of import transportation from the time the property begins
19 its transportation at a point outside of the United States until the
20 time that the property is delivered to the buyer in this state.
21 Property is also in the process of import transportation if it is
22 merely flowing through this state on its way to a destination in some
23 other state or country. However, property is no longer in the process
24 of import transportation when the property is:

25 (a) Put to actual use in any state, territory, or possession of
26 the United States for any purpose;

27 (b) Resold by the importer or any other person after the property
28 has arrived in this state or any other state, territory, or
29 possession of the United States, regardless of whether the property
30 is in its original unbroken package or container; or

31 (c) Processed, handled, or otherwise stopped in transit for a
32 business purpose other than shipping needs, if the processing,
33 handling or other stoppage of transit occurs within the United
34 States, including any of its possessions or territories, or the
35 territorial waters of this state or any other state, regardless of
36 whether the processing, handling, or other stoppage of transit occurs
37 within a foreign trade zone.

1 (3) (a) Tangible personal property is in export commerce when the
2 seller delivers the property to:

3 (i) The buyer at a destination in a foreign country;

4 (ii) A carrier consigned to and for transportation to a
5 destination in a foreign country;

6 (iii) The buyer at shipside or aboard the buyer's vessel or other
7 vehicle of transportation under circumstances where it is clear that
8 the process of exportation of the property has begun; or

9 (iv) The buyer in this state if the property is capable of being
10 transported to a foreign destination under its own power, the seller
11 files a shipper's export declaration with respect to the property
12 listing the seller as the exporter, and the buyer immediately
13 transports the property directly to a destination in a foreign
14 country. This subsection (3) (a) (iv) does not apply to sales of motor
15 vehicles as defined in RCW 46.04.320.

16 (b) The exemption under this subsection (3) applies with respect
17 to property delivered to the buyer in this state if, at the time of
18 delivery, there is a certainty of export, and the process of export
19 has begun. The process of exportation will not be deemed to have
20 begun if the property is merely in storage awaiting shipment, even
21 though there is reasonable certainty that the property will be
22 exported. The intention to export, as evidenced for example, by
23 financial and contractual relationships does not indicate certainty
24 of export. The process of exportation begins when the property starts
25 its final and certain continuous movement to a destination in a
26 foreign country.

27 (4) Persons claiming an exemption under this section must keep
28 and maintain records for the period required by RCW 82.32.070
29 establishing their right to the exemption.

30 Part VI

31 Sourcing Mitigation for Local Governments

32 **Sec. 601.** RCW 82.14.500 and 2017 3rd sp.s. c 28 s 402 are each
33 amended to read as follows:

34 (1) In order to mitigate local sales tax revenue net losses as a
35 result of the sourcing provisions of the streamlined sales and use
36 tax agreement under this title, the state treasurer, on July 1, 2011,
37 and each July 1st thereafter through July 1, 2019, must transfer into
38 the streamlined sales and use tax mitigation account from the general

1 fund the sum required to mitigate actual net losses as determined
2 under this section.

3 (2) Beginning July 1, 2008, and continuing until the department
4 determines annual losses under subsection (3) of this section, the
5 department must determine the amount of local sales tax net loss each
6 local taxing jurisdiction experiences as a result of the sourcing
7 provisions of the streamlined sales and use tax agreement under this
8 title each calendar quarter. The department must determine losses by
9 analyzing and comparing data from tax return information and tax
10 collections for each local taxing jurisdiction before and after July
11 1, 2008, on a calendar quarter basis. The department's analysis may
12 be revised and supplemented in consultation with the oversight
13 committee as provided in subsection (4) of this section. To determine
14 net losses, the department must reduce losses by the amount of
15 voluntary compliance revenue for the calendar quarter analyzed.
16 Beginning December 31, 2008, distributions must be made quarterly
17 from the streamlined sales and use tax mitigation account by the
18 state treasurer, as directed by the department, to each local taxing
19 jurisdiction, other than public facilities districts for losses in
20 respect to taxes imposed under the authority of RCW 82.14.390, in an
21 amount representing its net losses for the previous calendar quarter.
22 Distributions must be made on the last working day of each calendar
23 quarter and must cease when distributions under subsection (3) of
24 this section begin.

25 (3) (a) By December 31, 2009, or such later date the department in
26 consultation with the oversight committee determines that sufficient
27 data is available, the department must determine each local taxing
28 jurisdiction's annual loss. The department must determine annual
29 losses by comparing at least twelve months of data from tax return
30 information and tax collections for each local taxing jurisdiction
31 before and after July 1, 2008. The department is not required to
32 determine annual losses on a recurring basis, but may make any
33 adjustments to annual losses as it deems proper as a result of the
34 annual reviews provided in (b) of this subsection. Beginning the
35 calendar quarter in which the department determines annual losses,
36 and each calendar quarter thereafter through September 30, 2019,
37 distributions must be made from the streamlined sales and use tax
38 mitigation account by the state treasurer on the last working day of
39 the calendar quarter, as directed by the department, to each local
40 taxing jurisdiction, other than public facilities districts for

1 losses in respect to taxes imposed under the authority of RCW
2 82.14.390, in an amount representing one-fourth of the jurisdiction's
3 annual loss reduced by voluntary compliance revenue reported during
4 the previous calendar quarter and marketplace facilitator/remote
5 seller revenue reported during the previous calendar quarter.

6 (b) The department's analysis of annual losses must be reviewed
7 by December 1st of each year and may be revised and supplemented in
8 consultation with the oversight committee as provided in subsection
9 (4) of this section.

10 (4) The department must convene an oversight committee to assist
11 in the determination of losses. The committee includes one
12 representative of one city whose revenues are increased, one
13 representative of one city whose revenues are reduced, one
14 representative of one county whose revenues are increased, one
15 representative of one county whose revenues are decreased, one
16 representative of one transportation authority under RCW 82.14.045
17 whose revenues are increased, and one representative of one
18 transportation authority under RCW 82.14.045 whose revenues are
19 reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007
20 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight
21 committee must meet quarterly with the department to review and
22 provide additional input and direction on the department's analyses
23 of losses. Local taxing jurisdictions may also present to the
24 oversight committee additional information to improve the
25 department's analyses of the jurisdiction's loss. Beginning January
26 1, 2010, the oversight committee must meet at least annually with the
27 department by December 1st.

28 (5) The rule-making provisions of chapter 34.05 RCW do not apply
29 to this section.

30 (6) (a) As a result of part II of chapter 28, Laws of 2017 3rd sp.
31 sess., local sales and use tax revenue is anticipated to increase due
32 to additional tax remittance by marketplace facilitators, remote
33 sellers, and consumers. This additional revenue will further mitigate
34 the losses that resulted from the sourcing provisions of the
35 streamlined sales and use tax agreement under this title and should
36 be reflected in mitigation payments to negatively impacted local
37 jurisdictions.

38 (b) Beginning January 1, 2018, and continuing through September
39 30, 2019, the department must determine the increased sales and use
40 tax revenue each local taxing jurisdiction experiences from

1 marketplace facilitator/remote seller revenue as a result of ((RCW
2 ~~82.08.053, 82.08.0531, 82.32.047, and 82.32.763, chapter 82.13 RCW,~~
3 ~~and~~) sections 201(~~, 211, and~~) through 213, chapter 28, Laws of
4 2017 3rd sp. sess. each calendar quarter. The department must convene
5 the mitigation advisory committee before January 1, 2018, to receive
6 input on the determination of marketplace facilitator/remote seller
7 revenue. Beginning with distributions made after March 31, 2018,
8 distributions from the streamlined sales and use tax mitigation
9 account by the state treasurer, as directed by the department, to
10 each local taxing jurisdiction, must be reduced by the amount of its
11 marketplace facilitator/remote seller revenue reported during the
12 previous calendar quarter. (~~No later than December 1, 2019, the~~
13 ~~department will determine the total marketplace facilitator/remote~~
14 ~~seller revenue for each local taxing jurisdiction for reporting~~
15 ~~periods beginning January 1, 2018, through reporting periods ending~~
16 ~~June 30, 2019. If the total distribution made from the streamlined~~
17 ~~sales and use tax mitigation account to a local taxing jurisdiction~~
18 ~~was not fully reduced by its total amount of marketplace facilitator/~~
19 ~~remote seller revenue for reporting periods beginning January 1,~~
20 ~~2018, through reporting periods ending June 30, 2019, the department~~
21 ~~must reduce the local taxing jurisdiction's distribution of local~~
22 ~~sales and use tax under RCW 82.14.060 by the excess amount~~
23 ~~received.))~~)

24
25

Part VII
Conforming Amendments

26 **Sec. 701.** RCW 34.05.010 and 2014 c 97 s 101 are each amended to
27 read as follows:

28 The definitions in this section apply throughout this chapter
29 unless the context clearly requires otherwise.

30 (1) "Adjudicative proceeding" means a proceeding before an agency
31 in which an opportunity for hearing before that agency is required by
32 statute or constitutional right before or after the entry of an order
33 by the agency. Adjudicative proceedings also include all cases of
34 licensing and rate making in which an application for a license or
35 rate change is denied except as limited by RCW 66.08.150, or a
36 license is revoked, suspended, or modified, or in which the granting
37 of an application is contested by a person having standing to contest
38 under the law.

1 (2) "Agency" means any state board, commission, department,
2 institution of higher education, or officer, authorized by law to
3 make rules or to conduct adjudicative proceedings, except those in
4 the legislative or judicial branches, the governor, or the attorney
5 general except to the extent otherwise required by law and any local
6 governmental entity that may request the appointment of an
7 administrative law judge under chapter 42.41 RCW.

8 (3) "Agency action" means licensing, the implementation or
9 enforcement of a statute, the adoption or application of an agency
10 rule or order, the imposition of sanctions, or the granting or
11 withholding of benefits.

12 Agency action does not include an agency decision regarding (a)
13 contracting or procurement of goods, services, public works, and the
14 purchase, lease, or acquisition by any other means, including eminent
15 domain, of real estate, as well as all activities necessarily related
16 to those functions, or (b) determinations as to the sufficiency of a
17 showing of interest filed in support of a representation petition, or
18 mediation or conciliation of labor disputes or arbitration of labor
19 disputes under a collective bargaining law or similar statute, or (c)
20 any sale, lease, contract, or other proprietary decision in the
21 management of public lands or real property interests, or (d) the
22 granting of a license, franchise, or permission for the use of
23 trademarks, symbols, and similar property owned or controlled by the
24 agency.

25 (4) "Agency head" means the individual or body of individuals in
26 whom the ultimate legal authority of the agency is vested by any
27 provision of law. If the agency head is a body of individuals, a
28 majority of those individuals constitutes the agency head.

29 (5) "Entry" of an order means the signing of the order by all
30 persons who are to sign the order, as an official act indicating that
31 the order is to be effective.

32 (6) "Filing" of a document that is required to be filed with an
33 agency means delivery of the document to a place designated by the
34 agency by rule for receipt of official documents, or in the absence
35 of such designation, at the office of the agency head.

36 (7) "Institutions of higher education" are the University of
37 Washington, Washington State University, Central Washington
38 University, Eastern Washington University, Western Washington
39 University, The Evergreen State College, the various community
40 colleges, and the governing boards of each of the above, and the

1 various colleges, divisions, departments, or offices authorized by
2 the governing board of the institution involved to act for the
3 institution, all of which are sometimes referred to in this chapter
4 as "institutions."

5 (8) "Interpretive statement" means a written expression of the
6 opinion of an agency, entitled an interpretive statement by the
7 agency head or its designee, as to the meaning of a statute or other
8 provision of law, of a court decision, or of an agency order.

9 (9) (a) "License" means a franchise, permit, certification,
10 approval, registration, charter, or similar form of authorization
11 required by law, but does not include (i) a license required solely
12 for revenue purposes, or (ii) a certification of an exclusive
13 bargaining representative, or similar status, under a collective
14 bargaining law or similar statute, or (iii) a license, franchise, or
15 permission for use of trademarks, symbols, and similar property owned
16 or controlled by the agency.

17 (b) "Licensing" includes the agency process respecting the
18 issuance, denial, revocation, suspension, or modification of a
19 license.

20 (10) "Mail" or "send," for purposes of any notice relating to
21 rule making or policy or interpretive statements, means regular mail
22 or electronic distribution, as provided in RCW 34.05.260. "Electronic
23 distribution" or "electronically" means distribution by (~~electronic~~
24 ~~mail or facsimile mail~~) email or fax.

25 (11) (a) "Order," without further qualification, means a written
26 statement of particular applicability that finally determines the
27 legal rights, duties, privileges, immunities, or other legal
28 interests of a specific person or persons.

29 (b) "Order of adoption" means the official written statement by
30 which an agency adopts, amends, or repeals a rule.

31 (12) "Party to agency proceedings," or "party" in a context so
32 indicating, means:

33 (a) A person to whom the agency action is specifically directed;
34 or

35 (b) A person named as a party to the agency proceeding or allowed
36 to intervene or participate as a party in the agency proceeding.

37 (13) "Party to judicial review or civil enforcement proceedings,"
38 or "party" in a context so indicating, means:

39 (a) A person who files a petition for a judicial review or civil
40 enforcement proceeding; or

1 (b) A person named as a party in a judicial review or civil
2 enforcement proceeding, or allowed to participate as a party in a
3 judicial review or civil enforcement proceeding.

4 (14) "Person" means any individual, partnership, corporation,
5 association, governmental subdivision or unit thereof, or public or
6 private organization or entity of any character, and includes another
7 agency.

8 (15) "Policy statement" means a written description of the
9 current approach of an agency, entitled a policy statement by the
10 agency head or its designee, to implementation of a statute or other
11 provision of law, of a court decision, or of an agency order,
12 including where appropriate the agency's current practice, procedure,
13 or method of action based upon that approach.

14 (16) "Rule" means any agency order, directive, or regulation of
15 general applicability (a) the violation of which subjects a person to
16 a penalty or administrative sanction; (b) which establishes, alters,
17 or revokes any procedure, practice, or requirement relating to agency
18 hearings; (c) which establishes, alters, or revokes any qualification
19 or requirement relating to the enjoyment of benefits or privileges
20 conferred by law; (d) which establishes, alters, or revokes any
21 qualifications or standards for the issuance, suspension, or
22 revocation of licenses to pursue any commercial activity, trade, or
23 profession; or (e) which establishes, alters, or revokes any
24 mandatory standards for any product or material which must be met
25 before distribution or sale. The term includes the amendment or
26 repeal of a prior rule, but does not include (i) statements
27 concerning only the internal management of an agency and not
28 affecting private rights or procedures available to the public, (ii)
29 declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic
30 restrictions for motor vehicles, bicyclists, and pedestrians
31 established by the secretary of transportation or his or her designee
32 where notice of such restrictions is given by official traffic
33 control devices, or (iv) rules of institutions of higher education
34 involving standards of admission, academic advancement, academic
35 credit, graduation and the granting of degrees, employment
36 relationships, or fiscal processes (~~(, or (v) the determination and~~
37 ~~publication of updated nexus thresholds by the department of revenue~~
38 ~~in accordance with RCW 82.04.067)).~~

39 (17) "Rules review committee" or "committee" means the joint
40 administrative rules review committee created pursuant to RCW

1 34.05.610 for the purpose of selectively reviewing existing and
2 proposed rules of state agencies.

3 (18) "Rule making" means the process for formulation and adoption
4 of a rule.

5 (19) "Service," except as otherwise provided in this chapter,
6 means posting in the United States mail, properly addressed, postage
7 prepaid, or personal or electronic service. Service by mail is
8 complete upon deposit in the United States mail. Agencies may, by
9 rule, authorize service by electronic transmission, or by commercial
10 parcel delivery company.

11 **Sec. 702.** RCW 82.04.066 and 2017 3rd sp.s. c 28 s 301 are each
12 amended to read as follows:

13 "Engaging within this state" and "engaging within the state,"
14 when used in connection with any apportionable activity as defined in
15 RCW 82.04.460 or selling activity taxable under RCW 82.04.250(1),
16 82.04.257(1), ~~((~~or~~))~~ 82.04.270, or other provision of this chapter
17 means that a person generates gross income of the business from
18 sources within this state, such as customers or intangible property
19 located in this state, regardless of whether the person is physically
20 present in this state.

21 **Sec. 703.** RCW 82.04.43391 and 2017 c 323 s 503 are each amended
22 to read as follows:

23 (1) In computing tax there may be deducted from the measure of
24 tax interest and fees on loans secured by commercial aircraft
25 primarily used to provide routine air service and owned by:

26 (a) An air carrier, as defined in RCW 82.42.010, which is
27 primarily engaged in the business of providing passenger air service;

28 (b) An affiliate of such air carrier; or

29 (c) A parent entity for which such air carrier is an affiliate.

30 (2) The deduction authorized under this section is not available
31 to any person who is physically present in this state as determined
32 under RCW 82.04.067(~~((~~6~~))~~).

33 (3) For purposes of this section, the following definitions
34 apply:

35 (a) "Affiliate" means a person is "affiliated," as defined in RCW
36 82.04.645, with another person; and

37 (b) "Commercial aircraft" means a commercial airplane as defined
38 in RCW 82.32.550.

1 **Sec. 704.** RCW 82.12.040 and 2017 3rd sp.s. c 28 s 213 are each
2 amended to read as follows:

3 (1) Every person who is subject to a collection obligation under
4 chapter 82.08 RCW(~~(, except a person making a valid election to~~
5 ~~comply with the notice and reporting provisions of RCW 82.13.020,)~~)
6 must obtain from the department a certificate of registration(~~(,~~
7 ~~and)~~). Such persons must, at the time of making sales of tangible
8 personal property, digital goods, digital codes, digital automated
9 services, extended warranties, or sales of any service defined as a
10 retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), or making
11 transfers of either possession or title, or both, of tangible
12 personal property for use in this state, collect from the purchasers
13 or transferees the tax imposed under this chapter. The tax to be
14 collected under this section must be in an amount equal to the
15 purchase price multiplied by the rate in effect for the retail sales
16 tax under RCW 82.08.020. This section does not apply to any retail
17 sale if, in respect to such sale, the seller is subject to a tax
18 collection obligation under chapter 82.08 RCW.

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

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

1 taken from the buyer a copy of a direct pay permit issued under RCW
2 82.32.087.

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

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

15 (6) Notwithstanding subsections (1) through (4) of this section,
16 any person making sales is not obligated to collect the tax imposed
17 by this chapter if the state is prohibited under the Constitution or
18 laws of the United States from requiring the person to collect the
19 tax imposed by this chapter.

20 (7) Notwithstanding subsections (1) through (4) of this section,
21 any licensed dealer facilitating a firearm sale or transfer between
22 two unlicensed persons by conducting background checks under chapter
23 9.41 RCW is not obligated to collect the tax imposed by this chapter.

24 **Part VIII**
25 **Miscellaneous**

26 NEW SECTION. **Sec. 801.** The repeals and amendments in this act
27 do not affect any existing right acquired or liability or obligation
28 incurred under the statutes repealed or amended, or under any rule or
29 order adopted under those statutes, nor do they affect any proceeding
30 instituted under them.

31 NEW SECTION. **Sec. 802.** If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 803.** This act applies prospectively only,
2 except for sections 106 and 201 of this act, which apply both
3 prospectively and retroactively to October 1, 2018.

4 NEW SECTION. **Sec. 804.** Sections 101, 104, 106, 201, 402, 403,
5 404, 405, and 501 of this act are necessary for the immediate
6 preservation of the public peace, health, or safety, or support of
7 the state government and its existing public institutions, and take
8 effect immediately.

9 NEW SECTION. **Sec. 805.** Sections 105, 301, 302, 401, and 704 of
10 this act are necessary for the immediate preservation of the public
11 peace, health, or safety, or support of the state government and its
12 existing public institutions, and take effect July 1, 2019.

13 NEW SECTION. **Sec. 806.** Sections 102, 103, 107, 701, 702, and
14 703 of this act take effect January 1, 2020.

15 NEW SECTION. **Sec. 807.** Section 601 of this act expires October
16 1, 2019."

17 Correct the title.

EFFECT: Provides an import exemption for unroasted coffee beans.

--- END ---