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**SUBSTITUTE SENATE BILL 5581 (Corrected Copy)**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Rolfes, Braun, Carlyle, Keiser, and Saldaña; by request of Department of Revenue)

1 AN ACT Relating to improving the effectiveness and adequacy of  
2 state tax laws by clarifying and simplifying nexus provisions, by  
3 decreasing compliance and administrative burdens for taxpayers and  
4 the department of revenue, by facilitating the collection of new tax  
5 revenue resulting from the United States supreme court's decision in  
6 South Dakota v. Wayfair, Inc., by providing more consistent tax  
7 obligations for both domestic and foreign sellers, and by simplifying  
8 the expiration of sales tax sourcing mitigation payments to local  
9 governments on September 30, 2019; amending RCW 82.04.067, 82.04.067,  
10 82.04.220, 82.08.010, 82.08.052, 82.08.0531, 82.32.045, 82.08.0293,  
11 82.32.020, 82.32.715, 82.32.762, 34.05.328, 82.04.610, 82.14.500,  
12 34.05.010, 82.04.066, 82.04.43391, and 82.12.040; adding new sections  
13 to chapter 82.02 RCW; repealing RCW 82.08.053, 82.13.010, 82.13.020,  
14 82.13.030, 82.13.040, 82.13.050, 82.32.047, 82.32.733, and 82.32.763;  
15 creating new sections; providing effective dates; providing an  
16 expiration date; and declaring an emergency.

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

18 **Part I**  
19 **Nexus**

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

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

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

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

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

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

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

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

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

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

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

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

37       (c) The average value of property must be determined by averaging  
38 the values at the beginning and ending of the applicable calendar  
39 year; but the department may require the averaging of monthly values

1 during the applicable calendar year if reasonably required to  
2 properly reflect the average value of the taxpayer's property.

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

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

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

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

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

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

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

39 (3) (a) Payroll counting toward the thresholds in subsection  
40 (1) (c) (ii) and (iv) of this section is the total amount paid by the

1 taxpayer for compensation in this state during the current or  
2 immediately preceding calendar year plus nonemployee compensation  
3 paid to representative third parties in this state. Nonemployee  
4 compensation paid to representative third parties includes the gross  
5 amount paid to nonemployees who represent the taxpayer in  
6 interactions with the taxpayer's clients and includes sales  
7 commissions.

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

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

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

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

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

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

27 (c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or  
28 82.04.270, the gross proceeds of sales taxable under those statutory  
29 provisions and sourced to this state in accordance with RCW  
30 82.32.730.

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

1 adjusted under this subsection. The thresholds must be adjusted to  
2 reflect that cumulative percentage change in the consumer price  
3 index. The adjusted thresholds must be rounded to the nearest one  
4 thousand dollars. Any adjustment will apply to tax periods that begin  
5 after the adjustment is made.

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

10 (6) (a) (i) Except as provided in (a) (iii) of this subsection (6),  
11 subsections (1) through (5) of this section only apply with respect  
12 to the taxes on persons engaged in apportionable activities as  
13 defined in RCW 82.04.460 or making wholesale sales taxable under RCW  
14 82.04.257(1) or 82.04.270.

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

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

31 (b) For purposes of this subsection, a person is physically  
32 present in this state if the person has property or employees in this  
33 state.

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

1       (~~(ii) A remote seller as defined in RCW 82.08.052 is presumed to~~  
2 ~~be engaged in activities in this state that are significantly~~  
3 ~~associated with the remote seller's ability to establish or maintain~~  
4 ~~a market for its products in this state if the remote seller is~~  
5 ~~presumed to have a substantial nexus with this state under RCW~~  
6 ~~82.08.052. The presumption in this subsection (6)(c)(ii) may be~~  
7 ~~rebutted as provided in RCW 82.08.052. To the extent that the~~  
8 ~~presumption in RCW 82.08.052 is no longer operative pursuant to RCW~~  
9 ~~82.32.762, the presumption in this subsection (6)(c)(ii) is no longer~~  
10 ~~operative.))~~)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38       ~~(c) For persons taxable under RCW 82.04.250(1), 82.04.257(1), or~~  
39 ~~82.04.270, the gross proceeds of sales taxable under those statutory~~

1 provisions and sourced to this state in accordance with RCW  
2 82.32.730.

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

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

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

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

36 ~~(iii) For purposes of the taxes imposed under this chapter on the~~  
37 ~~business of making sales at retail taxable under RCW 82.04.250(1) or~~  
38 ~~82.04.257(1), a person is also deemed to have a substantial nexus~~  
39 ~~with this state if the person's receipts from this state, pursuant to~~  
40 ~~subsection (4) (c) of this section, meet either criterion in~~

1 ~~subsection (1)(c)(iii) or (iv) of this section, as adjusted under~~  
2 ~~subsection (5) of this section.~~

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

6 (2)(a) Cumulative gross receipts counting toward the threshold in  
7 subsection (1)(c)(i) of this section include all of a person's gross  
8 income of the business attributed to this state. For purposes of this  
9 subsection, gross income of the business is attributed to this state  
10 as follows:

11 (i) For apportionable income, all amounts included in the  
12 numerator of the receipts factor under RCW 82.04.462 and, in the case  
13 of financial institutions, all amounts included in the numerator of  
14 the receipts factor under the rule adopted by the department as  
15 authorized in RCW 82.04.460(2); and

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

19 (b) For a marketplace facilitator, cumulative gross receipts  
20 counting toward the threshold in subsection (1)(c)(i) of this section  
21 include, in addition to the gross proceeds of its own sales, the  
22 cumulative gross proceeds from sales by all marketplace sellers  
23 through the marketplace facilitator's marketplace, including  
24 marketplace sellers that do not have a substantial nexus with this  
25 state under the provisions of this section.

26 (3)(a) For purposes of (~~this~~) subsection (1)(c)(ii) of this  
27 section, a person is physically present in this state if the person  
28 has property or employees in this state.

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

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

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

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

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

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

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

10 (2) ~~((a))~~ A person who ~~((has))~~ establishes a substantial nexus  
11 with this state in the current calendar year under the provisions of  
12 RCW 82.04.067 ~~((, based solely on the person's property, payroll, or~~  
13 ~~receipts in this state during the current calendar year,))~~ is subject  
14 to the tax imposed under this chapter for the current calendar year  
15 only on business activity occurring on and after the date that the  
16 person established a substantial nexus with this state in the current  
17 calendar year. This subsection does not apply to a person who also  
18 had a substantial nexus with this state during the immediately  
19 preceding calendar year under RCW 82.04.067, and such person is  
20 taxable under this chapter for the current calendar year in its  
21 entirety.

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

24 ~~(i) The immediately preceding calendar year under RCW 82.04.067;~~  
25 ~~or~~

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

28 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.02  
29 RCW to read as follows:

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

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

3       For the purposes of this chapter:

4       (1) (a) (i) "Selling price" includes "sales price." "Sales price"  
5 means the total amount of consideration, except separately stated  
6 trade-in property of like kind, including cash, credit, property, and  
7 services, for which tangible personal property, extended warranties,  
8 digital goods, digital codes, digital automated services, or other  
9 services or anything else defined as a "retail sale" under RCW  
10 82.04.050 are sold, leased, or rented, valued in money, whether  
11 received in money or otherwise. No deduction from the total amount of  
12 consideration is allowed for the following: (A) The seller's cost of  
13 the property sold; (B) the cost of materials used, labor or service  
14 cost, interest, losses, all costs of transportation to the seller,  
15 all taxes imposed on the seller, and any other expense of the seller;  
16 (C) charges by the seller for any services necessary to complete the  
17 sale, other than delivery and installation charges; (D) delivery  
18 charges; and (E) installation charges.

19       (ii) When tangible personal property is rented or leased under  
20 circumstances that the consideration paid does not represent a  
21 reasonable rental for the use of the articles so rented or leased,  
22 the "selling price" must be determined as nearly as possible  
23 according to the value of such use at the places of use of similar  
24 products of like quality and character under such rules as the  
25 department may prescribe;

26       (b) "Selling price" or "sales price" does not include: Discounts,  
27 including cash, term, or coupons that are not reimbursed by a third  
28 party that are allowed by a seller and taken by a purchaser on a  
29 sale; interest, financing, and carrying charges from credit extended  
30 on the sale of tangible personal property, extended warranties,  
31 digital goods, digital codes, digital automated services, or other  
32 services or anything else defined as a retail sale in RCW 82.04.050,  
33 if the amount is separately stated on the invoice, bill of sale, or  
34 similar document given to the purchaser; and any taxes legally  
35 imposed directly on the consumer that are separately stated on the  
36 invoice, bill of sale, or similar document given to the purchaser;

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

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

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

6 (iii) The amount of the consideration attributable to the sale is  
7 fixed and determinable by the seller at the time of the sale of the  
8 item to the purchaser; and

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

10 (A) The purchaser presents a coupon, certificate, or other  
11 documentation to the seller to claim a price reduction or discount  
12 where the coupon, certificate, or documentation is authorized,  
13 distributed, or granted by a third party with the understanding that  
14 the third party will reimburse any seller to whom the coupon,  
15 certificate, or documentation is presented;

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

20 (C) The price reduction or discount is identified as a third  
21 party price reduction or discount on the invoice received by the  
22 purchaser or on a coupon, certificate, or other documentation  
23 presented by the purchaser;

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

29 (ii) "Seller" includes marketplace facilitators, whether making  
30 sales in their own right or facilitating sales on behalf of  
31 marketplace sellers.

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

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

35 (~~(ii)~~) (B) A professional employer organization when a covered  
36 employee coemployed with the client under the terms of a professional  
37 employer agreement engages in activities that constitute a sale at  
38 retail that is subject to the tax imposed by this chapter. In such  
39 cases, the client, and not the professional employer organization, is

1 deemed to be the seller and is responsible for collecting and  
2 remitting the tax imposed by this chapter.

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

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

18 (4) "Delivery charges" means charges by the seller of personal  
19 property or services for preparation and delivery to a location  
20 designated by the purchaser of personal property or services  
21 including, but not limited to, transportation, shipping, postage,  
22 handling, crating, and packing;

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

32 (6) The meaning attributed in chapter 82.04 RCW to the terms "tax  
33 year," "taxable year," "person," "company," "sale," "sale at  
34 wholesale," "wholesale," "business," "engaging in business," "cash  
35 discount," "successor," "consumer," "in this state," "within this  
36 state," "marijuana," "useable marijuana," and "marijuana-infused  
37 products" applies equally to the provisions of this chapter;

38 (7) For the purposes of the taxes imposed under this chapter and  
39 under chapter 82.12 RCW, "tangible personal property" means personal  
40 property that can be seen, weighed, measured, felt, or touched, or

1 that is in any other manner perceptible to the senses. Tangible  
2 personal property includes electricity, water, gas, steam, and  
3 prewritten computer software;

4 (8) "Extended warranty" has the same meaning as in RCW  
5 82.04.050(7);

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

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

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

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

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

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

21 (12) The terms "agriculture," "farming," "horticulture,"  
22 "horticultural," and "horticultural product" may not be construed to  
23 include or relate to marijuana, useable marijuana, or marijuana-  
24 infused products unless the applicable term is explicitly defined to  
25 include marijuana, useable marijuana, or marijuana-infused products.

26 (13)(a) "Affiliated person" means a person that, with respect to  
27 another person:

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

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

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

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

37 (ii) An indirect ownership interest in a person is an ownership  
38 interest in an entity that has an ownership interest in the person or  
39 in an entity that has an indirect ownership interest in the person.

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

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

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

11 (ii) Engages directly or indirectly, through one or more  
12 affiliated persons, in transmitting or otherwise communicating the  
13 offer or acceptance between the buyer and seller. For purposes of  
14 this subsection, mere advertising does not constitute transmitting or  
15 otherwise communicating the offer or acceptance between the buyer and  
16 seller; and

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

20 (A) Payment processing services;

21 (B) Fulfillment or storage services;

22 (C) Listing products for sale;

23 (D) Setting prices;

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

25 (F) Taking orders; or

26 (G) Providing customer service or accepting or assisting with  
27 returns or exchanges.

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

29 (A) A person who provides internet advertising services,  
30 including listing products for sale, so long as the person does not  
31 also engage in the activity described in (a)(ii) of this subsection  
32 (15) in addition to any of the activities described in (a)(iii) of  
33 this subsection (15); or

34 (B) A person with respect to the provision of travel agency  
35 services or the operation of a marketplace or that portion of a  
36 marketplace that enables consumers to purchase transient lodging  
37 accommodations in a hotel or other commercial transient lodging  
38 facility.

39 (ii) The exclusion in this subsection (15)(b) does not apply to a  
40 marketplace or that portion of a marketplace that facilitates the

1 retail sale of transient lodging accommodations in homes, apartments,  
2 cabins, or other residential dwelling units.

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

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

6 (B) "Travel agency services" means arranging or booking, for a  
7 commission, fee or other consideration, vacation or travel packages,  
8 rental car or other travel reservations or accommodations, tickets  
9 for domestic or foreign travel by air, rail, ship, bus, or other  
10 medium of transportation, or hotel or other lodging accommodations.

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

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

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

21 ~~(1) ((For purposes of this chapter, a remote seller is presumed~~  
22 ~~to have a substantial nexus with this state and is obligated to~~  
23 ~~collect retail sales tax if the remote seller enters into an~~  
24 ~~agreement with a resident of this state under which the resident, for~~  
25 ~~a commission or other consideration, directly or indirectly refers~~  
26 ~~potential customers, whether by a link on an internet web site or~~  
27 ~~otherwise, to the remote seller, if the cumulative gross receipts~~  
28 ~~from sales by the remote seller to customers in this state who are~~  
29 ~~referred to the remote seller by all residents with this type of an~~  
30 ~~agreement with the remote seller exceed ten thousand dollars during~~  
31 ~~the preceding calendar year. This presumption may be rebutted by~~  
32 ~~proof that the resident with whom the remote seller has an agreement~~  
33 ~~did not engage in any solicitation in this state on behalf of the~~  
34 ~~remote seller that would satisfy the nexus requirement of the United~~  
35 ~~States Constitution during the calendar year in question. Proof may~~  
36 ~~be shown by (a) establishing, in a manner acceptable to the~~  
37 ~~department, that (i) each in-state person with whom the remote seller~~  
38 ~~has an agreement is prohibited from engaging in any solicitation~~  
39 ~~activities in this state that refer potential customers to the remote~~

1 seller, and (ii) such in-state person or persons have complied with  
2 that prohibition; or (b) any other means as may be approved by the  
3 department.

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

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

12 (4)) (a) From October 1, 2018, through December 31, 2019, a  
13 seller is obligated to collect and remit to the department the taxes  
14 imposed under this chapter, except as otherwise provided in RCW  
15 82.08.0531(2) and this subsection, if the seller, in the current or  
16 immediately preceding calendar year, had:

17 (i) More than one hundred thousand dollars of cumulative gross  
18 receipts from this state;

19 (ii) Subject to the limitation in (c)(ii) of this subsection (1),  
20 two hundred or more separate transactions for the delivery of  
21 products into this state; or

22 (iii) Subject to the limitation in RCW 82.32.531, physical  
23 presence in this state under RCW 82.04.067.

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

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

31 (ii) From the effective date of this section, a seller is  
32 relieved of the obligation to collect the taxes imposed under this  
33 chapter and remit those taxes to the department if that obligation  
34 arose solely based on the threshold in (a)(ii) of this subsection.

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

38 (iv) The term "transaction" does not include an agreement if the  
39 agreement is canceled or rescinded before any of the products are  
40 delivered to the buyer or other recipient designated by the buyer,

1 the seller retains no part of the consideration from the buyer, and  
2 the seller did not collect from the buyer any tax imposed or  
3 authorized under this title.

4 (v) With regard to agreements requiring multiple payments by the  
5 consumer, such as a lease, rental, or installment sale, such  
6 agreements count as a single transaction for purposes of this  
7 subsection, regardless of the number of payments required under the  
8 agreement. However, any modification of such an agreement that  
9 provides for additional payments is counted as an additional  
10 transaction.

11 (d)(i) Subject to (b) and (c) of this subsection (1), for a  
12 marketplace facilitator, receipts and transactions counting toward  
13 the thresholds in (a)(i) and (ii) of this subsection include, in  
14 addition to the cumulative gross receipts and separate transactions  
15 of its own sales, the cumulative gross receipts and separate  
16 transactions from sales by all marketplace sellers through the  
17 marketplace facilitator's marketplace, including marketplace sellers  
18 that are not obligated to collect the taxes under this chapter  
19 pursuant to the provisions of this section.

20 (ii) For a purchase made by one consumer through a marketplace  
21 facilitator, where the purchase involves sales by multiple  
22 marketplace sellers, the purchase is deemed to be one transaction for  
23 the marketplace facilitator and one transaction apiece for each  
24 marketplace seller.

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

28 (3)(a) For purposes of this section, the following definitions  
29 apply:

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

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

34 (iii) "Product" has the same meaning as provided in RCW  
35 82.32.023.

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

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

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

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

8 (b) Nothing in this subsection (4) affects the ongoing tax  
9 collection obligation of any seller that was required, or elected, to  
10 collect the taxes imposed under this chapter on or before October 1,  
11 2018.

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

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

15 A seller that is obligated to collect the taxes imposed under  
16 chapter 82.08 RCW must also collect all other applicable taxes and  
17 fees in effect as of the effective date of this section, or enacted  
18 after December 31, 2018. For purposes of this section, "taxes and  
19 fees" means any monetary exaction, regardless of its label, imposed  
20 on a buyer and that the seller is required to collect and pay over to  
21 the department.

## 22 **Part II**

### 23 **Marketplace Facilitators**

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

26 (1) ~~((a))~~ For purposes of this chapter and chapters 82.04 and  
27 82.12 RCW, a marketplace facilitator ~~((or referrer))~~ is deemed to be  
28 an agent of any marketplace seller making retail sales through the  
29 marketplace facilitator's ~~((physical or electronic))~~ marketplace ~~((or~~  
30 ~~directly resulting from a referral of the purchaser by the~~  
31 ~~referrer))~~.

32 ~~((b))~~ (2) Beginning October 1, 2018, marketplace facilitators  
33 subject to a tax collection obligation under RCW 82.08.052 (1) or (2)  
34 must collect and remit to the department retail sales tax on all  
35 taxable retail sales made or facilitated by the marketplace  
36 facilitator, whether in its own right or as an agent of a marketplace  
37 seller, regardless of whether the marketplace seller is subject to a

1 tax collection obligation under RCW 82.08.052 (1) or (2). Beginning  
2 January 1, 2020, the collection obligation of a marketplace  
3 facilitator under this chapter also applies to any other taxes and  
4 fees, as defined under section 107 of this act, that are imposed on a  
5 retail sale made or facilitated by the marketplace facilitator,  
6 whether in its own right or as an agent of a marketplace seller,  
7 regardless of whether the marketplace seller has a tax collection  
8 obligation under RCW 82.08.052 (1) or (2).

9 (3) In addition to other applicable recordkeeping requirements,  
10 the department may require a marketplace facilitator (~~or referrer~~)  
11 to provide or make available to the department any information the  
12 department determines is reasonably necessary to enforce the  
13 provisions of this chapter and chapter 82.13 RCW. Such information  
14 may include documentation of sales made by marketplace sellers  
15 through the marketplace facilitator's (~~physical or electronic~~)  
16 marketplace (~~or directly resulting from a referral by the~~  
17 ~~referrer~~). The department may prescribe by rule the form and manner  
18 for providing this information.

19 ((+2)) (4) (a) Beginning July 1, 2019, to ensure that marketplace  
20 sellers have the necessary information to timely and accurately file  
21 their excise tax returns with the department pursuant to RCW  
22 82.32.045, a marketplace facilitator must, at a minimum, provide each  
23 of its marketplace sellers with access, through a written report or  
24 other means, to gross sales information for all Washington sales made  
25 as an agent of the marketplace seller under this section during the  
26 immediately preceding month. Marketplace facilitators must provide  
27 such access within fifteen calendar days following the end of each  
28 month.

29 (b) If a marketplace seller does not receive the gross sales  
30 information for all Washington sales through a marketplace  
31 facilitator, as required under (a) of this subsection (4), the  
32 marketplace seller may determine its business and occupation tax  
33 liability under chapter 82.04 RCW based on a reasonable method of  
34 estimating Washington sales as may be required or approved by the  
35 department.

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

39 (5) If a marketplace facilitator (~~or referrer~~) has fully  
40 complied with the requirements of subsection (4) (a) of this section,

1 the marketplace facilitator is relieved of liability under this  
2 chapter and chapter 82.12 RCW for failure to collect the correct  
3 amount of tax to the extent that the marketplace facilitator (~~(or~~  
4 ~~referrer)~~) can show to the department's satisfaction that the error  
5 was due to incorrect information given to the marketplace facilitator  
6 (~~(or~~~~referrer)~~) by the marketplace seller, unless the marketplace  
7 facilitator(~~(, or referrer,)~~) and marketplace seller are affiliated  
8 persons. Where the marketplace facilitator (~~(or~~~~referrer)~~) is  
9 relieved of liability under this subsection (~~((2))~~) (5), the  
10 marketplace seller is solely liable for the amount of uncollected tax  
11 due.

12 (~~((3))~~) (6)(a) Subject to the limits in (b) and (c) of this  
13 subsection (~~((3))~~) (6), a marketplace facilitator (~~(or~~~~referrer)~~)  
14 that has fully complied with the requirements of subsection (4)(a) of  
15 this section is relieved of liability under this chapter and chapter  
16 82.12 RCW for the failure to collect tax on taxable retail sales to  
17 the extent that the marketplace facilitator (~~(or~~~~referrer)~~) can show  
18 to the department's satisfaction that:

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

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

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

27 (b) Liability relief for a marketplace facilitator under (a) of  
28 this subsection (~~((3))~~) (6) for a calendar year is limited as  
29 follows:

30 (i) For calendar year 2018, the liability relief may not exceed  
31 ten percent of the total tax due under this chapter and chapter 82.12  
32 RCW on taxable retail sales facilitated by the marketplace  
33 facilitator as agent of a marketplace seller and sourced to this  
34 state under RCW 82.32.730 during the same calendar year.

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

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

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

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

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

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

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

29       (i) Accepts the order for the product;

30       (ii) Communicates to the marketplace seller the buyer's offer to  
31 purchase the product;

32       (iii) Accepts the buyer's payment for the product; or

33       (iv) Delivers or arranges for delivery of the product.

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

38       (e) The department may by rule determine the manner in which a  
39 taxpayer may claim the liability relief provided under this  
40 subsection.

1       ~~((4))~~ (7) Except as otherwise provided in this section, a  
2 marketplace seller obligated ~~((or electing))~~ to collect the taxes  
3 imposed under this chapter and chapter 82.12 RCW is not required to  
4 collect such taxes on all taxable retail sales through a marketplace  
5 operated by a marketplace facilitator ~~((or directly resulting from a  
6 referral of the purchaser to the marketplace seller by the referrer))~~  
7 if the marketplace seller has obtained documentation from the  
8 marketplace facilitator ~~((or referrer))~~ indicating that the  
9 marketplace facilitator ~~((or referrer))~~ is registered with the  
10 department and will collect all applicable taxes due under this  
11 chapter and chapter 82.12 RCW on all taxable retail sales made on  
12 behalf of the marketplace seller through the marketplace operated by  
13 the marketplace facilitator ~~((or taxable retail sales directly  
14 resulting from a referral of the purchaser to the marketplace seller  
15 by the referrer))~~. The documentation required by this subsection  
16 ~~((4))~~ (7) must be provided in a form and manner prescribed by or  
17 acceptable to the department. This subsection ~~((4))~~ (7) does not  
18 relieve a marketplace seller from liability for uncollected taxes due  
19 under this chapter or chapter 82.12 RCW resulting from a marketplace  
20 facilitator's ~~((or referrer's))~~ failure to collect the proper amount  
21 of tax due when the error was due to incorrect information given to  
22 the marketplace facilitator ~~((or referrer))~~ by the marketplace  
23 seller.

24       ~~((5) Except as otherwise provided in this section, a marketplace  
25 seller that is also a remote seller subject to RCW 82.08.053(1) is  
26 relieved of its obligation to collect sales or use taxes imposed  
27 under RCW 82.08.053 with respect to all taxable retail sales through  
28 a marketplace operated by a marketplace facilitator that provides the  
29 marketplace seller with written confirmation that the marketplace  
30 facilitator has elected to comply with the notice and reporting  
31 requirements of RCW 82.13.020 in lieu of collecting sales and use  
32 taxes.~~

33       ~~(6) Notwithstanding subsections (4) and (5) of this section, a  
34 marketplace seller is not relieved of the obligation to collect taxes  
35 imposed under this chapter and chapter 82.12 RCW or comply with RCW  
36 82.08.053 with respect to retail sales of digital products and  
37 digital codes, other than (a) specified digital products and digital  
38 games and (b) digital codes used to redeem specified digital products  
39 and digital games, until January 1, 2020.~~



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

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

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

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

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

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

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

25       (ii) Forty-six thousand six hundred sixty-seven dollars per year  
26 for persons generating at least fifty percent of their taxable amount  
27 from activities taxable under RCW 82.04.255, 82.04.290(2)(a), and  
28 82.04.285;

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

32       (c) The person is not required to collect or pay to the  
33 department of revenue any other tax or fee which the department is  
34 authorized to collect.

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

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

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

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

6 **Part IV**

7 **Ensuring Continuing Compliance with the Streamlined Sales & Use Tax**  
8 **Agreement and Addressing Potential Federal Preemption**

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

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

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

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

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

23 (2) The exemption of "food and food ingredients" provided for in  
24 subsection (1) of this section does not apply to prepared food, soft  
25 drinks, bottled water, or dietary supplements. The definitions in  
26 this subsection apply throughout this section unless the context  
27 clearly requires otherwise.

28 (a) "Bottled water" means water that is placed in a safety sealed  
29 container or package for human consumption. Bottled water is calorie  
30 free and does not contain sweeteners or other additives except that  
31 it may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)  
32 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;  
33 (vi) preservatives; and (vii) only those flavors, extracts, or  
34 essences derived from a spice or fruit. "Bottled water" includes  
35 water that is delivered to the buyer in a reusable container that is  
36 not sold with the water.

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

1 (i) Contains one or more of the following dietary ingredients:  
2 (A) A vitamin;  
3 (B) A mineral;  
4 (C) An herb or other botanical;  
5 (D) An amino acid;  
6 (E) A dietary substance for use by humans to supplement the diet  
7 by increasing the total dietary intake; or  
8 (F) A concentrate, metabolite, constituent, extract, or  
9 combination of any ingredient described in this subsection;  
10 (ii) Is intended for ingestion in tablet, capsule, powder,  
11 softgel, gelcap, or liquid form, or if not intended for ingestion in  
12 such form, is not represented as conventional food and is not  
13 represented for use as a sole item of a meal or of the diet; and  
14 (iii) Is required to be labeled as a dietary supplement,  
15 identifiable by the "supplement facts" box found on the label as  
16 required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered  
17 as of January 1, 2003.  
18 (c) (i) "Prepared food" means:  
19 (A) Food sold in a heated state or heated by the seller;  
20 (B) Food sold with eating utensils provided by the seller,  
21 including plates, knives, forks, spoons, glasses, cups, napkins, or  
22 straws. A plate does not include a container or packaging used to  
23 transport the food; or  
24 (C) Two or more food ingredients mixed or combined by the seller  
25 for sale as a single item, except:  
26 (I) Food that is only cut, repackaged, or pasteurized by the  
27 seller; or  
28 (II) Raw eggs, fish, meat, poultry, and foods containing these  
29 raw animal foods requiring cooking by the consumer as recommended by  
30 the federal food and drug administration in chapter 3, part 401.11 of  
31 The Food Code, published by the food and drug administration, as  
32 amended or renumbered as of January 1, 2003, so as to prevent  
33 foodborne illness.  
34 (ii) Food is "sold with eating utensils provided by the seller"  
35 if:  
36 (A) The seller's customary practice for that item is to  
37 physically deliver or hand a utensil to the customer with the food or  
38 food ingredient as part of the sales transaction. If the food or food  
39 ingredient is prepackaged with a utensil, the seller is considered to  
40 have physically delivered a utensil to the customer unless the food

1 and utensil are prepackaged together by a food manufacturer  
2 classified under sector 311 of the North American industry  
3 classification system (NAICS);

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

7 (C) (I) The seller makes utensils available to its customers, and  
8 the seller has more than seventy-five percent prepared food sales.  
9 For purposes of this subsection (2) (c) (ii) (C), a seller has more than  
10 seventy-five percent prepared food sales if the seller's gross retail  
11 sales of prepared food under (c) (i) (A), (c) (i) (C), and (c) (ii) (B) of  
12 this subsection equal more than seventy-five percent of the seller's  
13 gross retail sales of all food and food ingredients, including  
14 prepared food, soft drinks, and dietary supplements.

15 (II) However, even if a seller has more than seventy-five percent  
16 prepared food sales, four servings or more of food or food  
17 ingredients packaged for sale as a single item and sold for a single  
18 price are not "sold with utensils provided by the seller" unless the  
19 seller's customary practice for the package is to physically hand or  
20 otherwise deliver a utensil to the customer as part of the sales  
21 transaction. Whenever available, the number of servings included in a  
22 package of food or food ingredients must be determined based on the  
23 manufacturer's product label. If no label is available, the seller  
24 must reasonably determine the number of servings.

25 (III) The seller must determine a single prepared food sales  
26 percentage annually for all the seller's establishments in the state  
27 based on the prior year of sales. The seller may elect to determine  
28 its prepared food sales percentage based either on the prior calendar  
29 year or on the prior fiscal year. A seller may not change its elected  
30 method for determining its prepared food percentage without the  
31 written consent of the department. The seller must determine its  
32 annual prepared food sales percentage as soon as possible after  
33 accounting records are available, but in no event later than ninety  
34 days after the beginning of the seller's calendar or fiscal year. A  
35 seller may make a good faith estimate of its first annual prepared  
36 food sales percentage if the seller's records for the prior year are  
37 not sufficient to allow the seller to calculate the prepared food  
38 sales percentage. The seller must adjust its good faith estimate  
39 prospectively if its relative sales of prepared foods in the first

1 ninety days of operation materially depart from the seller's  
2 estimate.

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

6 (A) Food sold by a seller whose proper primary (~~North American~~  
7 ~~industry classification system~~—())NAICS(()) classification is  
8 manufacturing in sector 311, except subsector 3118 (bakeries), as  
9 provided in the "North American industry classification system—United  
10 States, 2002";

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

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

16 (d) "Soft drinks" means nonalcoholic beverages that contain  
17 natural or artificial sweeteners. Soft drinks do not include  
18 beverages that contain: Milk or milk products; soy, rice, or similar  
19 milk substitutes; or greater than fifty percent of vegetable or fruit  
20 juice by volume.

21 (3) Notwithstanding anything in this section to the contrary, the  
22 exemption of "food and food ingredients" provided in this section  
23 applies to food and food ingredients that are furnished, prepared, or  
24 served as meals:

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

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

31 (c) That are provided to residents, sixty-two years of age or  
32 older, of a qualified low-income senior housing facility by the  
33 lessor or operator of the facility. The sale of a meal that is billed  
34 to both spouses of a marital community or both domestic partners of a  
35 domestic partnership meets the age requirement in this subsection

36 (3)(c) if at least one of the spouses or domestic partners is at  
37 least sixty-two years of age. For purposes of this subsection,  
38 "qualified low-income senior housing facility" means a facility:

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

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

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

9 (4)(a) Subsection (1) of this section notwithstanding, the retail  
10 sale of food and food ingredients is subject to sales tax under RCW  
11 82.08.020 if the food and food ingredients are sold through a vending  
12 machine. Except as provided in (b) of this subsection, the selling  
13 price of food and food ingredients sold through a vending machine for  
14 purposes of RCW 82.08.020 is fifty-seven percent of the gross  
15 receipts.

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

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

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

26 For the purposes of this chapter:

27 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to  
28 the words and phrases "tax year," "taxable year," "person,"  
29 "company," "gross proceeds of sales," "gross income of the business,"  
30 "business," "engaging in business," "successor," "gross operating  
31 revenue," "gross income," "taxpayer," "retail sale," "seller,"  
32 "buyer," "purchaser," "extended warranty," and "value of products"  
33 apply equally to the provisions of this chapter.

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

1 (3) Whenever "property" or "personal property" is used, those  
2 terms must be construed to include digital goods and digital codes  
3 unless: (a) It is clear from the context that the term "personal  
4 property" is intended only to refer to tangible personal property;  
5 (b) it is clear from the context that the term "property" is intended  
6 only to refer to tangible personal property, real property, or both;  
7 or (c) to construe the term "property" or "personal property" as  
8 including digital goods and digital codes would yield unlikely,  
9 absurd, or strained consequences.

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

12 (a) "Agreement" means the streamlined sales and use tax  
13 agreement.

14 (b) "Associate member" means a petitioning state that is found to  
15 be in compliance with the agreement and changes to its laws, rules,  
16 or other authorities necessary to bring it into compliance are not in  
17 effect, but are scheduled to take effect on or before January 1,  
18 2008. The petitioning states, by majority vote, may also grant  
19 associate member status to a petitioning state that does not receive  
20 an affirmative vote of three-fourths of the petitioning states upon a  
21 finding that the state has achieved substantial compliance with the  
22 terms of the agreement as a whole, but not necessarily each required  
23 provision, measured qualitatively, and there is a reasonable  
24 expectation that the state will achieve compliance by January 1,  
25 2008.

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

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

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

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

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

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

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

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

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

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

25 (h) "Model 3 seller" means a seller that has sales in at least  
26 five member states, has total annual sales revenue of at least five  
27 hundred million dollars, has a proprietary system that calculates the  
28 amount of tax due each jurisdiction, and has entered into a  
29 performance agreement with the member states that establishes a tax  
30 performance standard for the seller. As used in this subsection  
31 (4)(h), a seller includes an affiliated group of sellers using the  
32 same proprietary system.

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

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

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

15 (2) For certified service providers, the monetary allowance may  
16 include a base rate that applies to taxable transactions processed by  
17 the certified service provider. (~~Additionally, for a period not to~~  
18 ~~exceed twenty-four months following a seller's registration under RCW~~  
19 ~~82.32.030(3), the monetary allowance may include a percentage of tax~~  
20 ~~revenue generated by the seller.)~~)

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

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

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

32 (1) If the department determines that a change, taking effect  
33 after (~~September 1, 2015~~) the effective date of this section, in  
34 the streamlined sales and use tax agreement or federal law creates a  
35 conflict with any provision of (~~RCW 82.08.052~~) chapter . . . , Laws  
36 of 2019 (this act), such conflicting provision or provisions of (~~RCW~~  
37 ~~82.08.052~~) chapter . . . , Laws of 2019 (this act), including any  
38 related provisions that would not function as originally intended,  
39 have no further force and effect as of the date the change in the

1 streamlined sales and use tax agreement or federal law becomes  
2 effective.

3 (2) For purposes of this section:

4 (a) A change in federal law conflicts with ~~((RCW 82.08.052))~~  
5 chapter . . . , Laws of 2019 (this act) if the change ~~((clearly allows~~  
6 ~~states to impose greater sales and use tax collection obligations on~~  
7 ~~remote sellers than provided for, or))~~ clearly prevents states from  
8 imposing sales and use tax collection obligations on remote sellers  
9 to the extent provided for ~~((, under RCW 82.08.052))~~ under  
10 chapter . . . , Laws of 2019 (this act).

11 (b) A change in the streamlined sales and use tax agreement  
12 conflicts with ~~((RCW 82.08.052))~~ chapter . . . , Laws of 2019 (this  
13 act) if one or more provisions of ~~((RCW 82.08.052))~~ chapter . . . ,  
14 Laws of 2019 (this act) causes this state to be found out of  
15 compliance with the streamlined sales and use tax agreement by its  
16 governing board.

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

21 ~~((a))~~ (i) For purposes of conflicts between the streamlined  
22 sales and use tax agreement and chapter . . . , Laws of 2019 (this  
23 act), the department may adopt rules in accordance with chapter 34.05  
24 RCW, including emergency rules, that are consistent with the  
25 streamlined sales and use tax agreement ~~((and that impose sales and~~  
26 ~~use tax collection obligations on remote sellers to the fullest~~  
27 ~~extent allowed under state and federal law)); and~~

28 ~~((b))~~ (ii) For purposes of conflicts between federal law and  
29 chapter . . . , Laws of 2019 (this act), the department must, by rule  
30 or rules adopted in accordance with chapter 34.05 RCW, including  
31 emergency rules:

32 (A) Impose sales and use tax collection obligations and business  
33 and occupation tax on remote sellers to the fullest extent allowed  
34 under state and federal law, which may include adopting provisions  
35 identical or substantially similar to those in sections 202 and  
36 204(6)(c)(ii), chapter 5, Laws of 2015 3rd sp. sess.; and

37 (B) Implement election, notice, and reporting provisions  
38 substantially similar to those in sections 202 through 207, chapter  
39 28, Laws of 2017 3rd sp. sess. The department must impose such  
40 election, notice, and reporting provisions only on remote sellers and

1 marketplace facilitators against whom the department is unable to  
2 enforce a tax collection obligation as a result of a change in  
3 federal law. The department must not impose election, notice, and  
4 reporting provisions on referrers as defined in section 204, chapter  
5 28, Laws of 2017 3rd sp. sess. The department must impose penalties  
6 for failure to comply with notice or reporting requirements  
7 consistent with those penalties imposed in section 206, chapter 28,  
8 Laws of 2017 3rd sp. sess.

9 (b) For purposes of (a)(i) and (ii) of this subsection (3), the  
10 department must include information on its web site informing  
11 taxpayers and the public (i) of the provision or provisions of ((RCW  
12 82.08.052)) chapter . . ., Laws of 2019 (this act) that will have no  
13 further force and effect, (ii) when such change will become  
14 effective, and (iii) about how to participate in any rule making  
15 conducted by the department in accordance with (a)(i) and (ii) of  
16 this subsection (3).

17 (4) For purposes of this section, "remote seller" ((has the same  
18 meaning as in RCW 82.08.052)) and "marketplace facilitator" have the  
19 same meaning as in RCW 82.13.010 through June 30, 2019, and RCW  
20 82.08.010 beginning July 1, 2019.

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

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

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

27 (b) Determine that the rule is needed to achieve the general  
28 goals and specific objectives stated under (a) of this subsection,  
29 and analyze alternatives to rule making and the consequences of not  
30 adopting the rule;

31 (c) Provide notification in the notice of proposed rule making  
32 under RCW 34.05.320 that a preliminary cost-benefit analysis is  
33 available. The preliminary cost-benefit analysis must fulfill the  
34 requirements of the cost-benefit analysis under (d) of this  
35 subsection. If the agency files a supplemental notice under RCW  
36 34.05.340, the supplemental notice must include notification that a  
37 revised preliminary cost-benefit analysis is available. A final cost-  
38 benefit analysis must be available when the rule is adopted under RCW  
39 34.05.360;

1 (d) Determine that the probable benefits of the rule are greater  
2 than its probable costs, taking into account both the qualitative and  
3 quantitative benefits and costs and the specific directives of the  
4 statute being implemented;

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

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

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

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

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

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

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

27 (2) In making its determinations pursuant to subsection (1)(b)  
28 through (h) of this section, the agency must place in the rule-making  
29 file documentation of sufficient quantity and quality so as to  
30 persuade a reasonable person that the determinations are justified.

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

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

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

38 (c) Promote and assist voluntary compliance; and

39 (d) Evaluate whether the rule achieves the purpose for which it  
40 was adopted, including, to the maximum extent practicable, the use of

1 interim milestones to assess progress and the use of objectively  
2 measurable outcomes.

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

7 (a) Coordinate implementation and enforcement of the rule with  
8 the other federal and state entities regulating the same activity or  
9 subject matter by making every effort to do one or more of the  
10 following:

11 (i) Deferring to the other entity;

12 (ii) Designating a lead agency; or

13 (iii) Entering into an agreement with the other entities  
14 specifying how the agency and entities will coordinate implementation  
15 and enforcement.

16 If the agency is unable to comply with this subsection (4)(a),  
17 the agency must report to the legislature pursuant to (b) of this  
18 subsection;

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

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

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

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

28 (i) Significant legislative rules of the departments of ecology,  
29 labor and industries, health, revenue, social and health services,  
30 and natural resources, the employment security department, the forest  
31 practices board, the office of the insurance commissioner, the state  
32 building code council, and to the legislative rules of the department  
33 of fish and wildlife implementing chapter 77.55 RCW; and

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

39 (b) This section does not apply to:

40 (i) Emergency rules adopted under RCW 34.05.350;

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

3 (iii) Rules adopting or incorporating by reference without  
4 material change federal statutes or regulations, Washington state  
5 statutes, rules of other Washington state agencies, shoreline master  
6 programs other than those programs governing shorelines of statewide  
7 significance, or, as referenced by Washington state law, national  
8 consensus codes that generally establish industry standards, if the  
9 material adopted or incorporated regulates the same subject matter  
10 and conduct as the adopting or incorporating rule;

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

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

17 (vi) Rules that set or adjust fees under the authority of RCW  
18 19.02.075 or that set or adjust fees or rates pursuant to legislative  
19 standards, including fees set or adjusted under the authority of RCW  
20 19.80.045;

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

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

27 (c) For purposes of this subsection:

28 (i) A "procedural rule" is a rule that adopts, amends, or repeals  
29 (A) any procedure, practice, or requirement relating to any agency  
30 hearings; (B) any filing or related process requirement for making  
31 application to an agency for a license or permit; or (C) any policy  
32 statement pertaining to the consistent internal operations of an  
33 agency.

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

37 (iii) A "significant legislative rule" is a rule other than a  
38 procedural or interpretive rule that (A) adopts substantive  
39 provisions of law pursuant to delegated legislative authority, the  
40 violation of which subjects a violator of such rule to a penalty or

1 sanction; (B) establishes, alters, or revokes any qualification or  
2 standard for the issuance, suspension, or revocation of a license or  
3 permit; or (C) adopts a new, or makes significant amendments to, a  
4 policy or regulatory program.

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

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

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

18 (b) The costs incurred by state agencies in complying with this  
19 section;

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

23 (d) The extent to which this section has adversely affected the  
24 capacity of agencies to fulfill their legislatively prescribed  
25 mission;

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

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

## 30 **Part V**

### 31 **Eliminating Unfair Tax Advantages for Foreign Marketplace Sellers and** 32 **Peer-to-Peer Car Rental Marketplace Facilitators**

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

35 (1) This chapter does not apply to:

36 (a) The sale of tangible personal property in ((import or))  
37 export commerce; and

1       (b) The wholesale sale of tangible personal property in import  
2 commerce, but only when the wholesale sale is between a parent  
3 company and its wholly owned subsidiary.

4       (2) Tangible personal property is in import commerce while the  
5 property is in the process of import transportation. Except as  
6 provided in (a) through (c) of this subsection, property is in the  
7 process of import transportation from the time the property begins  
8 its transportation at a point outside of the United States until the  
9 time that the property is delivered to the buyer in this state.  
10 Property is also in the process of import transportation if it is  
11 merely flowing through this state on its way to a destination in some  
12 other state or country. However, property is no longer in the process  
13 of import transportation when the property is:

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

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

20       (c) Processed, handled, or otherwise stopped in transit for a  
21 business purpose other than shipping needs, if the processing,  
22 handling or other stoppage of transit occurs within the United  
23 States, including any of its possessions or territories, or the  
24 territorial waters of this state or any other state, regardless of  
25 whether the processing, handling, or other stoppage of transit occurs  
26 within a foreign trade zone.

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

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

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

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

35       (iv) The buyer in this state if the property is capable of being  
36 transported to a foreign destination under its own power, the seller  
37 files a shipper's export declaration with respect to the property  
38 listing the seller as the exporter, and the buyer immediately  
39 transports the property directly to a destination in a foreign

1 country. This subsection (3)(a)(iv) does not apply to sales of motor  
2 vehicles as defined in RCW 46.04.320.

3 (b) The exemption under this subsection (3) applies with respect  
4 to property delivered to the buyer in this state if, at the time of  
5 delivery, there is a certainty of export, and the process of export  
6 has begun. The process of exportation will not be deemed to have  
7 begun if the property is merely in storage awaiting shipment, even  
8 though there is reasonable certainty that the property will be  
9 exported. The intention to export, as evidenced for example, by  
10 financial and contractual relationships does not indicate certainty  
11 of export. The process of exportation begins when the property starts  
12 its final and certain continuous movement to a destination in a  
13 foreign country.

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

## 17 **Part VI**

### 18 **Sourcing Mitigation for Local Governments**

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

21 (1) In order to mitigate local sales tax revenue net losses as a  
22 result of the sourcing provisions of the streamlined sales and use  
23 tax agreement under this title, the state treasurer, on July 1, 2011,  
24 and each July 1st thereafter through July 1, 2019, must transfer into  
25 the streamlined sales and use tax mitigation account from the general  
26 fund the sum required to mitigate actual net losses as determined  
27 under this section.

28 (2) Beginning July 1, 2008, and continuing until the department  
29 determines annual losses under subsection (3) of this section, the  
30 department must determine the amount of local sales tax net loss each  
31 local taxing jurisdiction experiences as a result of the sourcing  
32 provisions of the streamlined sales and use tax agreement under this  
33 title each calendar quarter. The department must determine losses by  
34 analyzing and comparing data from tax return information and tax  
35 collections for each local taxing jurisdiction before and after July  
36 1, 2008, on a calendar quarter basis. The department's analysis may  
37 be revised and supplemented in consultation with the oversight  
38 committee as provided in subsection (4) of this section. To determine

1 net losses, the department must reduce losses by the amount of  
2 voluntary compliance revenue for the calendar quarter analyzed.  
3 Beginning December 31, 2008, distributions must be made quarterly  
4 from the streamlined sales and use tax mitigation account by the  
5 state treasurer, as directed by the department, to each local taxing  
6 jurisdiction, other than public facilities districts for losses in  
7 respect to taxes imposed under the authority of RCW 82.14.390, in an  
8 amount representing its net losses for the previous calendar quarter.  
9 Distributions must be made on the last working day of each calendar  
10 quarter and must cease when distributions under subsection (3) of  
11 this section begin.

12 (3) (a) By December 31, 2009, or such later date the department in  
13 consultation with the oversight committee determines that sufficient  
14 data is available, the department must determine each local taxing  
15 jurisdiction's annual loss. The department must determine annual  
16 losses by comparing at least twelve months of data from tax return  
17 information and tax collections for each local taxing jurisdiction  
18 before and after July 1, 2008. The department is not required to  
19 determine annual losses on a recurring basis, but may make any  
20 adjustments to annual losses as it deems proper as a result of the  
21 annual reviews provided in (b) of this subsection. Beginning the  
22 calendar quarter in which the department determines annual losses,  
23 and each calendar quarter thereafter through September 30, 2019,  
24 distributions must be made from the streamlined sales and use tax  
25 mitigation account by the state treasurer on the last working day of  
26 the calendar quarter, as directed by the department, to each local  
27 taxing jurisdiction, other than public facilities districts for  
28 losses in respect to taxes imposed under the authority of RCW  
29 82.14.390, in an amount representing one-fourth of the jurisdiction's  
30 annual loss reduced by voluntary compliance revenue reported during  
31 the previous calendar quarter and marketplace facilitator/remote  
32 seller revenue reported during the previous calendar quarter.

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

37 (4) The department must convene an oversight committee to assist  
38 in the determination of losses. The committee includes one  
39 representative of one city whose revenues are increased, one  
40 representative of one city whose revenues are reduced, one

1 representative of one county whose revenues are increased, one  
2 representative of one county whose revenues are decreased, one  
3 representative of one transportation authority under RCW 82.14.045  
4 whose revenues are increased, and one representative of one  
5 transportation authority under RCW 82.14.045 whose revenues are  
6 reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007  
7 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight  
8 committee must meet quarterly with the department to review and  
9 provide additional input and direction on the department's analyses  
10 of losses. Local taxing jurisdictions may also present to the  
11 oversight committee additional information to improve the  
12 department's analyses of the jurisdiction's loss. Beginning January  
13 1, 2010, the oversight committee must meet at least annually with the  
14 department by December 1st.

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

17 (6) (a) As a result of part II of chapter 28, Laws of 2017 3rd sp.  
18 sess., local sales and use tax revenue is anticipated to increase due  
19 to additional tax remittance by marketplace facilitators, remote  
20 sellers, and consumers. This additional revenue will further mitigate  
21 the losses that resulted from the sourcing provisions of the  
22 streamlined sales and use tax agreement under this title and should  
23 be reflected in mitigation payments to negatively impacted local  
24 jurisdictions.

25 (b) Beginning January 1, 2018, and continuing through September  
26 30, 2019, the department must determine the increased sales and use  
27 tax revenue each local taxing jurisdiction experiences from  
28 marketplace facilitator/remote seller revenue as a result of ((RCW  
29 ~~82.08.053, 82.08.0531, 82.32.047, and 82.32.763, chapter 82.13 RCW,~~  
30 ~~and~~) sections 201(~~(, 211, and~~) through 213, chapter 28, Laws of  
31 2017 3rd sp. sess. each calendar quarter. The department must convene  
32 the mitigation advisory committee before January 1, 2018, to receive  
33 input on the determination of marketplace facilitator/remote seller  
34 revenue. Beginning with distributions made after March 31, 2018,  
35 distributions from the streamlined sales and use tax mitigation  
36 account by the state treasurer, as directed by the department, to  
37 each local taxing jurisdiction, must be reduced by the amount of its  
38 marketplace facilitator/remote seller revenue reported during the  
39 previous calendar quarter. ((No later than December 1, 2019, the  
40 department will determine the total marketplace facilitator/remote

1 ~~seller revenue for each local taxing jurisdiction for reporting~~  
2 ~~periods beginning January 1, 2018, through reporting periods ending~~  
3 ~~June 30, 2019. If the total distribution made from the streamlined~~  
4 ~~sales and use tax mitigation account to a local taxing jurisdiction~~  
5 ~~was not fully reduced by its total amount of marketplace facilitator/~~  
6 ~~remote seller revenue for reporting periods beginning January 1,~~  
7 ~~2018, through reporting periods ending June 30, 2019, the department~~  
8 ~~must reduce the local taxing jurisdiction's distribution of local~~  
9 ~~sales and use tax under RCW 82.14.060 by the excess amount~~  
10 ~~received.))~~

## 11 **Part VII**

### 12 **Conforming Amendments**

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

15 The definitions in this section apply throughout this chapter  
16 unless the context clearly requires otherwise.

17 (1) "Adjudicative proceeding" means a proceeding before an agency  
18 in which an opportunity for hearing before that agency is required by  
19 statute or constitutional right before or after the entry of an order  
20 by the agency. Adjudicative proceedings also include all cases of  
21 licensing and rate making in which an application for a license or  
22 rate change is denied except as limited by RCW 66.08.150, or a  
23 license is revoked, suspended, or modified, or in which the granting  
24 of an application is contested by a person having standing to contest  
25 under the law.

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

33 (3) "Agency action" means licensing, the implementation or  
34 enforcement of a statute, the adoption or application of an agency  
35 rule or order, the imposition of sanctions, or the granting or  
36 withholding of benefits.

37 Agency action does not include an agency decision regarding (a)  
38 contracting or procurement of goods, services, public works, and the

1 purchase, lease, or acquisition by any other means, including eminent  
2 domain, of real estate, as well as all activities necessarily related  
3 to those functions, or (b) determinations as to the sufficiency of a  
4 showing of interest filed in support of a representation petition, or  
5 mediation or conciliation of labor disputes or arbitration of labor  
6 disputes under a collective bargaining law or similar statute, or (c)  
7 any sale, lease, contract, or other proprietary decision in the  
8 management of public lands or real property interests, or (d) the  
9 granting of a license, franchise, or permission for the use of  
10 trademarks, symbols, and similar property owned or controlled by the  
11 agency.

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

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

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

23 (7) "Institutions of higher education" are the University of  
24 Washington, Washington State University, Central Washington  
25 University, Eastern Washington University, Western Washington  
26 University, The Evergreen State College, the various community  
27 colleges, and the governing boards of each of the above, and the  
28 various colleges, divisions, departments, or offices authorized by  
29 the governing board of the institution involved to act for the  
30 institution, all of which are sometimes referred to in this chapter  
31 as "institutions."

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

36 (9) (a) "License" means a franchise, permit, certification,  
37 approval, registration, charter, or similar form of authorization  
38 required by law, but does not include (i) a license required solely  
39 for revenue purposes, or (ii) a certification of an exclusive  
40 bargaining representative, or similar status, under a collective

1 bargaining law or similar statute, or (iii) a license, franchise, or  
2 permission for use of trademarks, symbols, and similar property owned  
3 or controlled by the agency.

4 (b) "Licensing" includes the agency process respecting the  
5 issuance, denial, revocation, suspension, or modification of a  
6 license.

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

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

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

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

20 (a) A person to whom the agency action is specifically directed;  
21 or

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

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

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

28 (b) A person named as a party in a judicial review or civil  
29 enforcement proceeding, or allowed to participate as a party in a  
30 judicial review or civil enforcement proceeding.

31 (14) "Person" means any individual, partnership, corporation,  
32 association, governmental subdivision or unit thereof, or public or  
33 private organization or entity of any character, and includes another  
34 agency.

35 (15) "Policy statement" means a written description of the  
36 current approach of an agency, entitled a policy statement by the  
37 agency head or its designee, to implementation of a statute or other  
38 provision of law, of a court decision, or of an agency order,  
39 including where appropriate the agency's current practice, procedure,  
40 or method of action based upon that approach.

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

26 (17) "Rules review committee" or "committee" means the joint  
27 administrative rules review committee created pursuant to RCW  
28 34.05.610 for the purpose of selectively reviewing existing and  
29 proposed rules of state agencies.

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

32 (19) "Service," except as otherwise provided in this chapter,  
33 means posting in the United States mail, properly addressed, postage  
34 prepaid, or personal or electronic service. Service by mail is  
35 complete upon deposit in the United States mail. Agencies may, by  
36 rule, authorize service by electronic transmission, or by commercial  
37 parcel delivery company.

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

1 "Engaging within this state" and "engaging within the state,"  
2 when used in connection with any apportionable activity as defined in  
3 RCW 82.04.460 or selling activity taxable under RCW 82.04.250(1),  
4 82.04.257(1), ~~((or))~~ 82.04.270, or other provision of this chapter  
5 means that a person generates gross income of the business from  
6 sources within this state, such as customers or intangible property  
7 located in this state, regardless of whether the person is physically  
8 present in this state.

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

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

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

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

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

18 (2) The deduction authorized under this section is not available  
19 to any person who is physically present in this state as determined  
20 under RCW 82.04.067(~~((+6))~~).

21 (3) For purposes of this section, the following definitions  
22 apply:

23 (a) "Affiliate" means a person is "affiliated," as defined in RCW  
24 82.04.645, with another person; and

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

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

29 (1) Every person who is subject to a collection obligation under  
30 chapter 82.08 RCW(~~((except a person making a valid election to~~  
31 ~~comply with the notice and reporting provisions of RCW 82.13.020,))~~)  
32 must obtain from the department a certificate of registration(~~((~~  
33 ~~and))~~). Such persons must, at the time of making sales of tangible  
34 personal property, digital goods, digital codes, digital automated  
35 services, extended warranties, or sales of any service defined as a  
36 retail sale in RCW 82.04.050 (2) (a) or (g) or (6)(c), or making  
37 transfers of either possession or title, or both, of tangible  
38 personal property for use in this state, collect from the purchasers

1 or transferees the tax imposed under this chapter. The tax to be  
2 collected under this section must be in an amount equal to the  
3 purchase price multiplied by the rate in effect for the retail sales  
4 tax under RCW 82.08.020. This section does not apply to any retail  
5 sale if, in respect to such sale, the seller is subject to a tax  
6 collection obligation under chapter 82.08 RCW.

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

17 (3) The tax required to be collected by this chapter is deemed to  
18 be held in trust by the retailer until paid to the department, and  
19 any retailer who appropriates or converts the tax collected to the  
20 retailer's own use or to any use other than the payment of the tax  
21 provided herein to the extent that the money required to be collected  
22 is not available for payment on the due date as prescribed is guilty  
23 of a misdemeanor. In case any seller fails to collect the tax herein  
24 imposed or having collected the tax, fails to pay the same to the  
25 department in the manner prescribed, whether such failure is the  
26 result of the seller's own acts or the result of acts or conditions  
27 beyond the seller's control, the seller is nevertheless personally  
28 liable to the state for the amount of such tax, unless the seller has  
29 taken from the buyer a copy of a direct pay permit issued under RCW  
30 82.32.087.

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

35 (5) Notwithstanding subsections (1) through (4) of this section,  
36 any person making sales is not obligated to collect the tax imposed  
37 by this chapter if the person would have been obligated to collect  
38 retail sales tax on the sale absent a specific exemption provided in  
39 chapter 82.08 RCW, and there is no corresponding use tax exemption in  
40 this chapter. Nothing in this subsection (5) may be construed as

1 relieving purchasers from liability for reporting and remitting the  
2 tax due under this chapter directly to the department.

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

8 (7) Notwithstanding subsections (1) through (4) of this section,  
9 any licensed dealer facilitating a firearm sale or transfer between  
10 two unlicensed persons by conducting background checks under chapter  
11 9.41 RCW is not obligated to collect the tax imposed by this chapter.

12 **Part VIII**  
13 **Miscellaneous**

14 NEW SECTION. **Sec. 801.** The repeals and amendments in this act  
15 do not affect any existing right acquired or liability or obligation  
16 incurred under the statutes repealed or amended, or under any rule or  
17 order adopted under those statutes, nor do they affect any proceeding  
18 instituted under them.

19 NEW SECTION. **Sec. 802.** If any provision of this act or its  
20 application to any person or circumstance is held invalid, the  
21 remainder of the act or the application of the provision to other  
22 persons or circumstances is not affected.

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

26 NEW SECTION. **Sec. 804.** Sections 101, 104, 106, 201, 402, 403,  
27 404, 405, and 501 of this act are necessary for the immediate  
28 preservation of the public peace, health, or safety, or support of  
29 the state government and its existing public institutions, and take  
30 effect immediately.

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

1        NEW SECTION.    **Sec. 806.**    Sections 102, 103, 107, 701, 702, and  
2    703 of this act take effect January 1, 2020.

3        NEW SECTION.    **Sec. 807.**    Section 601 of this act expires October  
4    1, 2019.

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