
ENGROSSED SUBSTITUTE SENATE BILL 6143

State of Washington

61st Legislature

2010 Regular Session

By Senate Ways & Means (originally sponsored by Senator Prentice)

READ FIRST TIME 03/06/10.

1 AN ACT Relating to modifying excise tax laws to preserve funding
2 for public schools, colleges, and universities, as well as other public
3 systems essential for the safety, health, and security of all
4 Washingtonians; amending RCW 82.04.220, 82.04.2907, 82.04.460,
5 82.04.080, 82.32.090, 82.12.020, 82.45.033, 82.45.070, 82.45.080,
6 82.45.100, 82.45.220, 43.07.390, 82.04.423, 82.04.4266, 82.04.250,
7 82.04.250, 82.04.298, 82.04.334, 82.04.4463, 82.08.806, 82.32.545,
8 82.32.550, 82.32.630, 82.32.632, 82.45.195, 35.102.150, 48.14.080,
9 82.45.010, 82.45.080, 82.32.145, 82.60.020, 82.62.010, 82.04.4282,
10 82.08.037, 82.12.037, 82.16.110, 82.08.890, 82.12.890, 54.28.011,
11 82.08.962, 82.12.962, 82.08.0293, 82.12.0293, 82.04.4451, 82.32.045,
12 82.08.020, 82.08.020, 44.04.120, 82.08.0206, 36.100.040, 67.28.181, and
13 82.14.410; reenacting and amending RCW 82.45.010, 82.04.260, 82.04.261,
14 82.04.440, 82.04.360, and 82.08.064; adding new sections to chapter
15 82.04 RCW; adding new sections to chapter 82.32 RCW; adding new
16 sections to chapter 82.08 RCW; adding new sections to chapter 82.12
17 RCW; creating new sections; repealing RCW 82.04.44525, 82.08.811,
18 82.12.811, and 82.04.394; providing effective dates; providing
19 expiration dates; and declaring an emergency.

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

2 **PART I**

3 **Minimum Nexus Standards**

4 NEW SECTION. **Sec. 101.** (1) The legislature finds that out-of-
5 state businesses that do not have a physical presence in Washington
6 earn significant income from Washington residents from providing
7 services or collecting royalties on the use of intangible property in
8 this state. The legislature further finds that these businesses
9 receive significant benefits and opportunities provided by the state,
10 such as: Laws providing protection of business interests or regulating
11 consumer credit; access to courts and judicial process to enforce
12 business rights, including debt collection and intellectual property
13 rights; an orderly and regulated marketplace; and police and fire
14 protection and a transportation system benefiting in-state agents and
15 other representatives of out-of-state businesses. Therefore, the
16 legislature intends to extend the state's business and occupation tax
17 to these companies to ensure that they pay their fair share of the cost
18 of services that this state renders and the infrastructure it provides.

19 (2)(a) The legislature also finds that the current cost
20 apportionment method in RCW 82.04.460(1) for apportioning most service
21 income has been difficult for both taxpayers and the department to
22 apply due in large part (i) to the difficulty in assigning certain
23 costs of doing business inside or outside of this state, and (ii) to
24 its dissimilarity with the apportionment methods used in other states
25 for their business activity taxes.

26 (b) The legislature further finds that there is a trend among
27 states to adopt a single factor apportionment formula based on sales.
28 The legislature recognizes that adoption of a sales factor only
29 apportionment method has the advantages of simplifying apportionment
30 and making Washington a more attractive place for businesses to expand
31 their property and payroll. For these reasons, the legislature adopts
32 single factor sales apportionment for purposes of apportioning royalty
33 income and certain service income.

34 (c) Nothing in this act may be construed, however, to authorize
35 apportionment of the gross income or value of products taxable under
36 the following business and occupation tax classifications: Retailing,

1 wholesaling, manufacturing, processing for hire, extracting, extracting
2 for hire, printing, government contracting, public road construction,
3 the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any
4 other activity not specifically included in the definition of
5 apportionable activities in RCW 82.04.460.

6 **Sec. 102.** RCW 82.04.220 and 1961 c 15 s 82.04.220 are each amended
7 to read as follows:

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

14 (2) A person who has a substantial nexus with this state in any tax
15 year will be deemed to have a substantial nexus with this state for the
16 following tax year.

17 NEW SECTION. **Sec. 103.** A new section is added to chapter 82.04
18 RCW to read as follows:

19 "Engaging within this state" and "engaging within the state," when
20 used in connection with any apportionable activity as defined in RCW
21 82.04.460, means that a person generates gross income of the business
22 from sources within this state, such as customers or intangible
23 property located in this state, regardless of whether the person is
24 physically present in this state.

25 NEW SECTION. **Sec. 104.** A new section is added to chapter 82.04
26 RCW to read as follows:

27 (1) A person engaging in business is deemed to have substantial
28 nexus with this state if the person is:

- 29 (a) An individual and is a resident or domiciliary of this state;
- 30 (b) A business entity and is organized or commercially domiciled in
31 this state; or

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

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

1 (ii) More than fifty thousand dollars of payroll in this state;
2 (iii) More than two hundred fifty thousand dollars of receipts from
3 this state; or
4 (iv) At least twenty-five percent of the person's total property,
5 total payroll, or total receipts in this state.

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

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

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

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

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

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

1 The determination of whether the real or personal property securing a
2 loan is located within this state must be made, as of the time the
3 original agreement was made, and any and all subsequent substitutions
4 of collateral must be disregarded.

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

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

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

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

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

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

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

37 (c) Nonemployee compensation is paid in this state if the service

1 performed by the representative third party occurs entirely or
2 primarily within this state.

3 (d) For purposes of this subsection, "compensation" means wages,
4 salaries, commissions, and any other form of remuneration paid to
5 employees or nonemployees and defined as gross income under 26 U.S.C.
6 Sec. 61 of the federal internal revenue code of 1986, as existing on
7 the effective date of this section.

8 (4) Receipts counting toward the thresholds in subsection
9 (1)(c)(iii) and (iv) of this section are those amounts included in the
10 numerator of the receipts factor under section 105 of this act and, for
11 financial institutions, those amounts included in the numerator of the
12 receipts factor under the rule adopted by the department as authorized
13 in RCW 82.04.460(2).

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

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

32 (6) Subsections (1) through (5) of this section only apply with
33 respect to the taxes imposed under this chapter on apportionable
34 activities as defined in RCW 82.04.460. For purposes of the taxes
35 imposed under this chapter on any activity not included in the
36 definition of apportionable activities in RCW 82.04.460, a person is
37 deemed to have a substantial nexus with this state if the person has a
38 physical presence in this state, which need only be demonstrably more

1 than a slightest presence. For purposes of this subsection, a person
2 is physically present in this state if the person has property or
3 employees in this state. A person is also physically present in this
4 state if the person, either directly or through an agent or other
5 representative, engages in activities in this state that are
6 significantly associated with the person's ability to establish or
7 maintain a market for its products in this state.

8 NEW SECTION. **Sec. 105.** A new section is added to chapter 82.04
9 RCW to read as follows:

10 (1) The apportionable income of a person within the scope of RCW
11 82.04.460(1) is apportioned to Washington by multiplying its
12 apportionable income by the receipts factor. Persons who are subject
13 to tax under more than one of the tax classifications enumerated in RCW
14 82.04.460(4)(a) (i) through (ix) must calculate a separate receipts
15 factor for each tax classification that the person is taxable under.

16 (2) For purposes of subsection (1) of this section, the receipts
17 factor is a fraction and is calculated as provided in subsections (3)
18 and (4) of this section and, for financial institutions, as provided in
19 the rule adopted by the department under the authority of RCW
20 82.04.460(2).

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

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

30 (i) Where the customer received the benefit of the taxpayer's
31 service or, in the case of gross income from royalties, where the
32 customer used the taxpayer's intangible property.

33 (ii) If the customer received the benefit of the service or used
34 the intangible property in more than one state, gross income of the
35 business must be attributed to the state in which the benefit of the
36 service was primarily received or in which the intangible property was
37 primarily used.

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

7 (iv) If the taxpayer is unable to attribute gross income of the
8 business under the provisions of (b)(i), (ii), or (iii) of this
9 subsection (3), gross income of the business must be attributed to the
10 state to which the billing statements or invoices are sent to the
11 customer by the taxpayer.

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

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

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

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

36 (c) Gross income of the business from engaging in an apportionable
37 activity must be excluded from the denominator of the receipts factor
38 if, in respect to such activity, at least some of the activity is

1 performed in this state, and the gross income is attributable under (b)
2 of this subsection (3) to a state in which the taxpayer is not taxable.
3 For purposes of this subsection (3)(c), "not taxable" means that the
4 taxpayer is not subject to a business activities tax by that state,
5 except that a taxpayer is taxable in a state in which it would be
6 deemed to have a substantial nexus with that state under the standards
7 in section 104(1) of this act regardless of whether that state imposes
8 such a tax. "Business activities tax" means a tax measured by the
9 amount of, or economic results of, business activity conducted in a
10 state. The term includes taxes measured in whole or in part on net
11 income or gross income or receipts. "Business activities tax" does not
12 include a sales tax, use tax, or a similar transaction tax, imposed on
13 the sale or acquisition of goods or services, whether or not
14 denominated a gross receipts tax or a tax imposed on the privilege of
15 doing business.

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

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

1 excise taxes under chapter 82.32 RCW, retroactively to the date the
2 original return was due, and will accrue until the additional taxes are
3 paid. Penalties as provided in RCW 82.32.090 will apply to any such
4 additional tax due only if the current tax year reporting is not
5 corrected and the additional tax is not paid by October 31st of the
6 following tax year. Interest as provided in RCW 82.32.060 will apply
7 to any tax paid in excess of that properly due on a return as a result
8 of a taxpayer using previous calendar year data or incomplete current-
9 year data to calculate the receipts factor.

10 (5) Unless the context clearly requires otherwise, the definitions
11 in this subsection apply throughout this section.

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

14 (b) "State" means a state of the United States, the District of
15 Columbia, the Commonwealth of Puerto Rico, any territory or possession
16 of the United States, or any foreign country or political subdivision
17 of a foreign country.

18 **Sec. 106.** RCW 82.04.2907 and 2009 c 535 s 407 are each amended to
19 read as follows:

20 (1) Upon every person engaging within this state in the business of
21 receiving income from royalties (~~(or charges in the nature of royalties~~
22 ~~for the granting of intangible rights, such as copyrights, licenses,~~
23 ~~patents, or franchise fees)), the amount of tax with respect to~~
24 ~~((such))~~ the business (~~(shall be))~~ is equal to the gross income from
25 royalties (~~(or charges in the nature of royalties from the business))~~)
26 multiplied by the rate of 0.484 percent.

27 (2) For the purposes of this section, "gross income from royalties"
28 means compensation for the use of intangible property, (~~(such as))~~
29 including charges in the nature of royalties, regardless of where the
30 intangible property will be used. For purposes of this subsection,
31 "intangible property" includes copyrights, patents, licenses,
32 franchises, trademarks, trade names, and similar items. (~~(It))~~ "Gross
33 income from royalties" does not include compensation for any natural
34 resource, the licensing of prewritten computer software to the end
35 user, or the licensing (~~(or use))~~ of digital goods, digital codes, or
36 digital automated services to the end user as defined in RCW
37 82.04.190(11).

1 **Sec. 107.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to
2 read as follows:

3 (1) Except as otherwise provided in this section, any person
4 ((rendering services)) earning apportionable income taxable under ((RCW
5 82.04.290 or 82.04.2908)) this chapter and ((maintaining places of
6 business both within and without this state which contribute to the
7 rendition of such services shall)) also taxable in another state, must,
8 for the purpose of computing tax liability under ((RCW 82.04.290 or
9 82.04.2908)) this chapter, apportion to this state, in accordance with
10 section 105 of this act, that portion of the person's ((gross))
11 apportionable income ((which is)) derived from ((services rendered))
12 business activities performed within this state. ((Where such
13 apportionment cannot be accurately made by separate accounting methods,
14 the taxpayer shall apportion to this state that proportion of the
15 taxpayer's total income which the cost of doing business within the
16 state bears to the total cost of doing business both within and without
17 the state.))

18 (2) ((Notwithstanding the provision of subsection (1) of this
19 section, persons doing business both within and without the state who
20 receive gross income from service charges, as defined in RCW 63.14.010
21 (relating to amounts charged for granting the right or privilege to
22 make deferred or installment payments) or who receive gross income from
23 engaging in business as financial institutions within the scope of
24 chapter 82.14A RCW (relating to city taxes on financial institutions)
25 shall apportion or allocate gross income taxable under RCW 82.04.290 to
26 this state pursuant to rules promulgated by the department consistent
27 with uniform rules for apportionment or allocation developed by the
28 states.)) The department must by rule provide a method of apportioning
29 the apportionable income of financial institutions, where such
30 apportionable income is taxable under RCW 82.04.290. The rule adopted
31 by the department must, to the extent feasible, be consistent with the
32 multistate tax commission's recommended formula for the apportionment
33 and allocation of net income of financial institutions as existing on
34 the effective date of this section or such subsequent date as may be
35 provided by the department by rule, consistent with the purposes of
36 this section, except that:

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

1 (b) The definition of "financial institution" contained in appendix
2 A to the multistate tax commission's recommended formula for the
3 apportionment and allocation of net income of financial institutions is
4 advisory only.

5 (3) The department (~~(shall)~~) may by rule provide a method or
6 methods of apportioning or allocating gross income derived from sales
7 of telecommunications service and competitive telephone service(~~(s)~~)
8 taxed under this chapter, if the gross proceeds of sales subject to tax
9 under this chapter do not fairly represent the extent of the taxpayer's
10 income attributable to this state. (~~(The rules shall be, so far as~~
11 ~~feasible, consistent with the methods of apportionment contained in~~
12 ~~this section and shall require the consideration of those facts,~~
13 ~~circumstances, and apportionment factors as will result in an equitable~~
14 ~~and constitutionally permissible division of the services.)~~) The rule
15 must provide for an equitable and constitutionally permissible division
16 of the tax base.

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

19 (a) "Apportionable income" means gross income of the business
20 generated from engaging in apportionable activities, including income
21 received from apportionable activities performed outside this state if
22 the income would be taxable under this chapter if received from
23 activities in this state, less the exemptions and deductions allowable
24 under this chapter. For purposes of this subsection, "apportionable
25 activities" means only those activities taxed under:

26 (i) RCW 82.04.255;

27 (ii) RCW 82.04.260 (3), (4), (5), (6), (7), (8), (9), and (12);

28 (iii) RCW 82.04.280(5);

29 (iv) RCW 82.04.285;

30 (v) RCW 82.04.286;

31 (vi) RCW 82.04.290;

32 (vii) RCW 82.04.2907;

33 (viii) RCW 82.04.2908; and

34 (ix) RCW 82.04.260(13), 82.04.263, and 82.04.280(1), but only to
35 the extent of any activity that would be taxable under any of the
36 provisions enumerated under (a)(i) through (viii) of this subsection
37 (4) if the tax classifications in RCW 82.04.260(13), 82.04.263, and
38 82.04.280(1) did not exist.

1 (b)(i) "Taxable in another state" means that the taxpayer is
2 subject to a business activities tax by another state on its income
3 received from engaging in apportionable activities; or the taxpayer is
4 not subject to a business activities tax by another state on its income
5 received from engaging in apportionable activities, but any other state
6 has jurisdiction to subject the taxpayer to a business activities tax
7 on such income under the substantial nexus standards in section 104(1)
8 of this act.

9 (ii) For purposes of this subsection (4)(b), "business activities
10 tax" and "state" have the same meaning as in section 105 of this act.

11 **Sec. 108.** RCW 82.04.080 and 1961 c 15 s 82.04.080 are each amended
12 to read as follows:

13 (1) "Gross income of the business" means the value proceeding or
14 accruing by reason of the transaction of the business engaged in and
15 includes gross proceeds of sales, compensation for the rendition of
16 services, gains realized from trading in stocks, bonds, or other
17 evidences of indebtedness, interest, discount, rents, royalties, fees,
18 commissions, dividends, and other emoluments however designated, all
19 without any deduction on account of the cost of tangible property sold,
20 the cost of materials used, labor costs, interest, discount, delivery
21 costs, taxes, or any other expense whatsoever paid or accrued and
22 without any deduction on account of losses.

23 (2) Financial institutions must determine gains realized from
24 trading in stocks, bonds, and other evidences of indebtedness on a net
25 annualized basis. For purposes of this subsection, a financial
26 institution means a person within the scope of the rule adopted by the
27 department under the authority of RCW 82.04.460(2).

28 NEW SECTION. **Sec. 109.** A new section is added to chapter 82.04
29 RCW to read as follows:

30 (1) This chapter does not apply to amounts received by a financial
31 institution from an affiliated person if the amounts are received from
32 transactions that are required to be at arm's length under sections 23A
33 or 23B of the federal reserve act as existing on the effective date of
34 this section or such subsequent date as may be provided by the
35 department by rule, consistent with the purposes of this section. For

1 purposes of this subsection, "financial institution" has the same
2 meaning as in RCW 82.04.080.

3 (2) As used in this section, "affiliated" means under common
4 control. "Common control" means the possession, directly or
5 indirectly, of more than fifty percent of the power to direct or cause
6 the direction of the management and policies of a person, whether
7 through the ownership of voting shares, by contract, or otherwise.

8 NEW SECTION. **Sec. 110.** A new section is added to chapter 82.04
9 RCW to read as follows:

10 (1) This chapter does not apply to amounts received by investment
11 conduits from cash and securities.

12 (2) For purposes of this section, the following definitions apply:

13 (a) "Investment conduit" means an entity formed by a financial
14 institution as defined in RCW 82.04.080 for the express purpose of
15 holding or owning cash or securities if the entity formed:

- 16 (i) Has no employees;
- 17 (ii) Has no direct profit-making motive;
- 18 (iii) Owns no tangible assets, other than cash or securities;
- 19 (iv) Holds or owns cash or securities solely as a conduit for
20 investors, allocating its income to holders of its ownership interests.
21 For the purposes of this subsection (2)(a)(iv), "ownership interest"
22 means interests categorized as debt or equity for purposes of federal
23 tax or generally accepted accounting principles; and

24 (v) Has, within twelve months of its organization or initial
25 capitalization date, issued ownership interests to other than
26 affiliated persons, equal to or greater than twenty-five percent of its
27 total issued ownership interests. For purposes of this subsection
28 (2)(a)(v), "affiliated" has the same meaning as in section 109 of this
29 act.

30 (b) "Securities" has the same meaning as in section 2 of the
31 securities act of 1933 and includes eligible assets as defined by Rule
32 3Aa-7 of the investment company act, as the law and rule existing on
33 the effective date of this section or such subsequent date as may be
34 provided by the department by rule, consistent with the purposes of
35 this section.

1 **PART II**

2 **Tax Avoidance Transactions**

3 NEW SECTION. **Sec. 201.** A new section is added to chapter 82.32
4 RCW to read as follows:

5 (1)(a) Unless otherwise specifically provided in statute, the
6 department must respect the form of a transaction, except where the
7 form of the transaction or a related series of transactions is adopted
8 for the purpose of:

9 (i) Disguising income received, or otherwise avoiding tax on
10 income, from a person that is not affiliated with the taxpayer;

11 (ii) Disguising the purchase or sale of property or services from
12 or to a person that is not affiliated with the taxpayer; or

13 (iii) Avoiding the tax imposed in RCW 82.12.020 on the use of
14 property in this state that is owned by an entity organized outside of
15 Washington.

16 (b) For purposes of this subsection, "affiliated" means under
17 common control. "Control" means the possession, directly or
18 indirectly, of more than fifty percent of the power to direct or cause
19 the direction of the management and policies of a person, whether
20 through the ownership of voting shares, by contract, or otherwise.

21 (2)(a) The department must, as resources allow, adopt rules to
22 assist in determining when to disregard the form of a transaction or a
23 related series of transactions adopted for the purposes described in
24 subsection (1)(a)(i) through (iii) of this section. In adopting rules,
25 the department may consider the following judicial doctrines, except to
26 the extent such doctrines are inconsistent with express provisions
27 contained in Washington state statutes:

28 (i) The sham transaction doctrine;

29 (ii) The economic substance doctrine;

30 (iii) The business purpose doctrine;

31 (iv) The substance over form doctrine;

32 (v) The step transaction doctrine; and

33 (vi) The assignment of income doctrine.

34 (b) The adoption of a rule as required under this subsection is not
35 a condition precedent for the department to use the authority provided
36 in this section. Any rules adopted under this section must include
37 examples of transactions that the department will disregard for tax
38 purposes.

1 (3) The provisions of this section are cumulative and nonexclusive
2 and do not affect any other remedies provided to the department under
3 statutory or common law.

4 NEW SECTION. **Sec. 202.** A new section is added to chapter 82.32
5 RCW to read as follows:

6 (1)(a) The department may not use section 201 of this act to
7 disregard any transaction, plan, or arrangement initiated before June
8 1, 2010, if, in respect to such transaction, plan, or arrangement, the
9 taxpayer had reported its tax liability in conformance with either
10 specific written instructions provided by the department to the
11 taxpayer, a determination published under the authority of RCW
12 82.32.410, or other document published by the department.

13 (b) This section does not apply if the transaction, plan, or
14 arrangement engaged in by the taxpayer differs materially from the
15 transaction, plan, or arrangement that was addressed in the specific
16 written instructions, published determination, or other published
17 document.

18 (2) For purposes of this section, "specific written instructions"
19 means tax reporting instructions provided to a taxpayer and which
20 specifically identifies the taxpayer to whom the instructions apply.
21 Specific written instructions may be provided as part of an audit, tax
22 assessment, determination, closing agreement, or in response to a
23 binding ruling request.

24 **Sec. 203.** RCW 82.32.090 and 2006 c 256 s 6 are each amended to
25 read as follows:

26 (1) If payment of any tax due on a return to be filed by a taxpayer
27 is not received by the department of revenue by the due date, there
28 (~~shall be~~) is assessed a penalty of five percent of the amount of the
29 tax; and if the tax is not received on or before the last day of the
30 month following the due date, there (~~shall be~~) is assessed a total
31 penalty of fifteen percent of the amount of the tax under this
32 subsection; and if the tax is not received on or before the last day of
33 the second month following the due date, there (~~shall be~~) is assessed
34 a total penalty of twenty-five percent of the amount of the tax under
35 this subsection. No penalty so added shall be less than five dollars.

1 (2) If the department of revenue determines that any tax has been
2 substantially underpaid, there (~~shall be~~) is assessed a penalty of
3 five percent of the amount of the tax determined by the department to
4 be due. If payment of any tax determined by the department to be due
5 is not received by the department by the due date specified in the
6 notice, or any extension thereof, there (~~shall be~~) is assessed a
7 total penalty of fifteen percent of the amount of the tax under this
8 subsection; and if payment of any tax determined by the department to
9 be due is not received on or before the thirtieth day following the due
10 date specified in the notice of tax due, or any extension thereof,
11 there (~~shall be~~) is assessed a total penalty of twenty-five percent
12 of the amount of the tax under this subsection. No penalty so added
13 (~~shall~~) may be less than five dollars. As used in this section,
14 "substantially underpaid" means that the taxpayer has paid less than
15 eighty percent of the amount of tax determined by the department to be
16 due for all of the types of taxes included in, and for the entire
17 period of time covered by, the department's examination, and the amount
18 of underpayment is at least one thousand dollars.

19 (3) If a warrant (~~be~~) is issued by the department (~~of revenue~~)
20 for the collection of taxes, increases, and penalties, there (~~shall~~
21 ~~be~~) is added thereto a penalty of ten percent of the amount of the
22 tax, but not less than ten dollars.

23 (4) If the department finds that a person has engaged in any
24 business or performed any act upon which a tax is imposed under this
25 title and that person has not obtained from the department a
26 registration certificate as required by RCW 82.32.030, the department
27 (~~shall~~) must impose a penalty of five percent of the amount of tax
28 due from that person for the period that the person was not registered
29 as required by RCW 82.32.030. The department (~~shall~~) may not impose
30 the penalty under this subsection (4) if a person who has engaged in
31 business taxable under this title without first having registered as
32 required by RCW 82.32.030, prior to any notification by the department
33 of the need to register, obtains a registration certificate from the
34 department.

35 (5) If the department finds that all or any part of a deficiency
36 resulted from the disregard of specific written instructions as to
37 reporting or tax liabilities, the department (~~shall~~) must add a
38 penalty of ten percent of the amount of the additional tax found due

1 because of the failure to follow the instructions. A taxpayer
2 disregards specific written instructions when the department (~~of~~
3 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
4 obligations and the taxpayer fails to act in accordance with those
5 instructions unless the department has not issued final instructions
6 because the matter is under appeal pursuant to this chapter or
7 departmental regulations. The department (~~shall~~) may not assess the
8 penalty under this section upon any taxpayer who has made a good faith
9 effort to comply with the specific written instructions provided by the
10 department to that taxpayer. Specific written instructions may be
11 given as a part of a tax assessment, audit, determination, or closing
12 agreement, provided that such specific written instructions (~~shall~~)
13 apply only to the taxpayer addressed or referenced on such documents.
14 Any specific written instructions by the department (~~of~~
15 ~~revenue~~ ~~shall~~) must be clearly identified as such and (~~shall~~) must inform
16 the taxpayer that failure to follow the instructions may subject the
17 taxpayer to the penalties imposed by this subsection.

18 (6) If the department finds that all or any part of a deficiency
19 resulted from engaging in a disregarded transaction, as described in
20 section 201(1)(a) (i), (ii), or (iii) of this act, the department must
21 assess a penalty of thirty-five percent of the additional tax found to
22 be due as a result of engaging in a transaction disregarded by the
23 department under section 201(1)(a) (i), (ii), or (iii) of this act.
24 The penalty provided in this subsection may be assessed together with
25 any other applicable penalties provided in this section on the same tax
26 found to be due, except for the evasion penalty provided in subsection
27 (7) of this section. The department may not assess the penalty under
28 this subsection if, before the department discovers the taxpayer's use
29 of a transaction described under section 201(1)(a) (i), (ii), or (iii)
30 of this act, the taxpayer discloses its participation in the
31 transaction to the department.

32 (7) If the department finds that all or any part of the deficiency
33 resulted from an intent to evade the tax payable (~~hereunder~~), a
34 further penalty of fifty percent of the additional tax found to be due
35 (~~shall~~) must be added.

36 (~~(7)~~) (8) The penalties imposed under subsections (1) through (4)
37 of this section can each be imposed on the same tax found to be due.

1 This subsection does not prohibit or restrict the application of other
2 penalties authorized by law.

3 ~~((+8))~~ (9) The department ~~((of revenue))~~ may not impose both the
4 evasion penalty and the penalty for disregarding specific written
5 instructions or the penalty provided in subsection (6) of this section
6 on the same tax found to be due.

7 ~~((+9))~~ (10) For the purposes of this section, "return" means any
8 document a person is required by the state of Washington to file to
9 satisfy or establish a tax or fee obligation that is administered or
10 collected by the department ~~((of revenue))~~, and that has a statutorily
11 defined due date.

12 NEW SECTION. Sec. 204. (1) The legislature finds that this
13 state's tax policy with respect to the taxation of transactions between
14 affiliated entities and the income derived from such transactions
15 (intercompany transactions) has motivated some taxpayers to engage in
16 transactions designed solely or primarily to minimize the tax effects
17 of intercompany transactions. The legislature further finds that some
18 intercompany transactions result from taxpayers that are required to
19 establish affiliated entities to comply with regulatory mandates and
20 that transactions between such affiliates effectively increases the tax
21 burden in this state on the affiliated group of entities.

22 (2) Therefore, as existing resources allow, the department of
23 revenue is directed to conduct a review of the state's tax policy with
24 respect to the taxation of intercompany transactions. The review must
25 include the impacts of such transactions under the state's business and
26 occupation tax and state and local sales and use taxes. The department
27 may include other taxes in the review as it deems appropriate.

28 (3) In conducting the review, the department must examine how this
29 state's tax policy compares to the tax policy of other states with
30 respect to the taxation of intercompany transactions. The department's
31 review must include an analysis of potential alternatives to the
32 current policy of taxing intercompany transactions, including their
33 estimated revenue impacts if practicable.

34 (4) In conducting this review, the department may seek input from
35 members of the business community and others as it deems appropriate.

36 (5) The department must report its findings to the fiscal
37 committees of the house of representatives and senate by December 1,

1 2010. However, if the department has not completed its review by
2 December 1, 2010, the department must provide the fiscal committees of
3 the legislature with a brief status report by December 1, 2010, and the
4 final report by December 1, 2011.

5 **Sec. 205.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
6 read as follows:

7 (1) There is ~~((hereby))~~ levied and ~~((there shall be))~~ collected
8 from every person in this state a tax or excise for the privilege of
9 using within this state as a consumer any:

10 (a) Article of tangible personal property ~~((purchased at retail,~~
11 ~~or))~~ acquired by ~~((lease, gift, repossession, or bailment, or extracted~~
12 ~~or produced or manufactured by the person so using the same, or~~
13 ~~otherwise furnished to a person engaged in any business taxable under~~
14 ~~RCW 82.04.280 (2) or (7))~~ the user in any manner, including tangible
15 personal property acquired at a casual or isolated sale, and including
16 by-products used by the manufacturer thereof, except as otherwise
17 provided in this chapter, irrespective of whether the article or
18 similar articles are manufactured or are available for purchase within
19 this state;

20 (b) Prewritten computer software, regardless of the method of
21 delivery, but excluding prewritten computer software that is either
22 provided free of charge or is provided for temporary use in viewing
23 information, or both;

24 (c) Services defined as a retail sale in RCW 82.04.050 (2) (a) or
25 (g), (3)(a), or (6)(b), excluding services defined as a retail sale in
26 RCW 82.04.050(6)(b) that are provided free of charge;

27 (d) Extended warranty; or

28 (e)(i) Digital good, digital code, or digital automated service,
29 including the use of any services provided by a seller exclusively in
30 connection with digital goods, digital codes, or digital automated
31 services, whether or not a separate charge is made for such services.

32 (ii) With respect to the use of digital goods, digital automated
33 services, and digital codes acquired by purchase, the tax imposed in
34 this subsection (1)(e) applies in respect to:

35 (A) Sales in which the seller has granted the purchaser the right
36 of permanent use;

1 (B) Sales in which the seller has granted the purchaser a right of
2 use that is less than permanent;

3 (C) Sales in which the purchaser is not obligated to make continued
4 payment as a condition of the sale; and

5 (D) Sales in which the purchaser is obligated to make continued
6 payment as a condition of the sale.

7 (iii) With respect to digital goods, digital automated services,
8 and digital codes acquired other than by purchase, the tax imposed in
9 this subsection (1)(e) applies regardless of whether or not the
10 consumer has a right of permanent use or is obligated to make continued
11 payment as a condition of use.

12 (2) The provisions of this chapter do not apply in respect to the
13 use of any article of tangible personal property, extended warranty,
14 digital good, digital code, digital automated service, or service
15 taxable under RCW 82.04.050 (2) (a) or (g), (3)(a), or (6)(b), if the
16 sale to, or the use by, the present user or the present user's bailor
17 or donor has already been subjected to the tax under chapter 82.08 RCW
18 or this chapter and the tax has been paid by the present user or by the
19 present user's bailor or donor.

20 (3)(a) Except as provided in this section, payment of the tax
21 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
22 of tangible personal property, extended warranty, digital good, digital
23 code, digital automated service, or other service does not have the
24 effect of exempting any other purchaser or user of the same property,
25 extended warranty, digital good, digital code, digital automated
26 service, or other service from the taxes imposed by such chapters.

27 (b) The tax imposed by this chapter does not apply:

28 (i) If the sale to, or the use by, the present user or his or her
29 bailor or donor has already been subjected to the tax under chapter
30 82.08 RCW or this chapter and the tax has been paid by the present user
31 or by his or her bailor or donor;

32 (ii) In respect to the use of any article of tangible personal
33 property acquired by bailment and the tax has once been paid based on
34 reasonable rental as determined by RCW 82.12.060 measured by the value
35 of the article at time of first use multiplied by the tax rate imposed
36 by chapter 82.08 RCW or this chapter as of the time of first use;

37 (iii) In respect to the use of any article of tangible personal

1 property acquired by bailment, if the property was acquired by a
2 previous bailee from the same bailor for use in the same general
3 activity and the original bailment was prior to June 9, 1961; or

4 (iv) To the use of digital goods or digital automated services,
5 which were obtained through the use of a digital code, if the sale of
6 the digital code to, or the use of the digital code by, the present
7 user or the present user's bailor or donor has already been subjected
8 to the tax under chapter 82.08 RCW or this chapter and the tax has been
9 paid by the present user or by the present user's bailor or donor.

10 (4)(a) Except as provided in (b) of this subsection (4), the tax is
11 levied and must be collected in an amount equal to the value of the
12 article used, value of the digital good or digital code used, value of
13 the extended warranty used, or value of the service used by the
14 taxpayer, multiplied by the applicable rates in effect for the retail
15 sales tax under RCW 82.08.020.

16 (b) In the case of a seller required to collect use tax from the
17 purchaser, the tax must be collected in an amount equal to the purchase
18 price multiplied by the applicable rate in effect for the retail sales
19 tax under RCW 82.08.020.

20 (5) For purposes of the tax imposed in this section, "person"
21 includes anyone within the definition of "buyer," "purchaser," and
22 "consumer" in RCW 82.08.010.

23 **Sec. 206.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
24 each reenacted and amended to read as follows:

25 (1) As used in this chapter, the term "sale" (~~(shall have)~~) has its
26 ordinary meaning and (~~(shall)~~) includes any conveyance, grant,
27 assignment, quitclaim, or transfer of the ownership of or title to real
28 property, including standing timber, or any estate or interest therein
29 for a valuable consideration, and any contract for such conveyance,
30 grant, assignment, quitclaim, or transfer, and any lease with an option
31 to purchase real property, including standing timber, or any estate or
32 interest therein or other contract under which possession of the
33 property is given to the purchaser, or any other person at the
34 purchaser's direction, and title to the property is retained by the
35 vendor as security for the payment of the purchase price. The term
36 also includes the grant, assignment, quitclaim, sale, or transfer of
37 improvements constructed upon leased land.

1 (2)(a) The term "sale" also includes the transfer or acquisition
2 within any twelve-month period of a controlling interest in any entity
3 with an interest in real property located in this state for a valuable
4 consideration.

5 (b) For the sole purpose of determining whether, pursuant to the
6 exercise of an option, a controlling interest was transferred or
7 acquired within a twelve-month period, the date that the option
8 agreement was executed is the date on which the transfer or acquisition
9 of the controlling interest is deemed to occur. For all other purposes
10 under this chapter, the date upon which the option is exercised is the
11 date of the transfer or acquisition of the controlling interest.

12 (c) For purposes of this subsection, all acquisitions of persons
13 acting in concert (~~shall~~) must be aggregated for purposes of
14 determining whether a transfer or acquisition of a controlling interest
15 has taken place. The department (~~of revenue shall~~) must adopt
16 standards by rule to determine when persons are acting in concert. In
17 adopting a rule for this purpose, the department (~~shall~~) must
18 consider the following:

19 (~~(a)~~) (i) Persons (~~shall~~) must be treated as acting in concert
20 when they have a relationship with each other such that one person
21 influences or controls the actions of another through common ownership;
22 and

23 (~~(b)~~) (ii) When persons are not commonly owned or controlled,
24 they (~~shall~~) must be treated as acting in concert only when the unity
25 with which the purchasers have negotiated and will consummate the
26 transfer of ownership interests supports a finding that they are acting
27 as a single entity. If the acquisitions are completely independent,
28 with each purchaser buying without regard to the identity of the other
29 purchasers, then the acquisitions (~~shall be~~) are considered separate
30 acquisitions.

31 (3) The term "sale" (~~shall~~) does not include:

32 (a) A transfer by gift, devise, or inheritance.

33 (b) A transfer of any leasehold interest other than of the type
34 mentioned above.

35 (c) A cancellation or forfeiture of a vendee's interest in a
36 contract for the sale of real property, whether or not such contract
37 contains a forfeiture clause, or deed in lieu of foreclosure of a
38 mortgage.

1 (d) The partition of property by tenants in common by agreement or
2 as the result of a court decree.

3 (e) The assignment of property or interest in property from one
4 spouse or one domestic partner to the other spouse or other domestic
5 partner in accordance with the terms of a decree of dissolution of
6 marriage or state registered domestic partnership or in fulfillment of
7 a property settlement agreement.

8 (f) The assignment or other transfer of a vendor's interest in a
9 contract for the sale of real property, even though accompanied by a
10 conveyance of the vendor's interest in the real property involved.

11 (g) Transfers by appropriation or decree in condemnation
12 proceedings brought by the United States, the state or any political
13 subdivision thereof, or a municipal corporation.

14 (h) A mortgage or other transfer of an interest in real property
15 merely to secure a debt, or the assignment thereof.

16 (i) Any transfer or conveyance made pursuant to a deed of trust or
17 an order of sale by the court in any mortgage, deed of trust, or lien
18 foreclosure proceeding or upon execution of a judgment, or deed in lieu
19 of foreclosure to satisfy a mortgage or deed of trust.

20 (j) A conveyance to the federal housing administration or veterans
21 administration by an authorized mortgagee made pursuant to a contract
22 of insurance or guaranty with the federal housing administration or
23 veterans administration.

24 (k) A transfer in compliance with the terms of any lease or
25 contract upon which the tax as imposed by this chapter has been paid or
26 where the lease or contract was entered into prior to the date this tax
27 was first imposed.

28 (l) The sale of any grave or lot in an established cemetery.

29 (m) A sale by the United States, this state or any political
30 subdivision thereof, or a municipal corporation of this state.

31 (n) A sale to a regional transit authority or public corporation
32 under RCW 81.112.320 under a sale/leaseback agreement under RCW
33 81.112.300.

34 (o) A transfer of real property, however effected, if it consists
35 of a mere change in identity or form of ownership of an entity where
36 there is no change in the beneficial ownership. These include
37 transfers to a corporation or partnership which is wholly owned by the
38 transferor and/or the transferor's spouse or domestic partner or

1 children of the transferor or the transferor's spouse or domestic
2 partner(~~(:—PROVIDED, That)~~). However, if thereafter such transferee
3 corporation or partnership voluntarily transfers such real property, or
4 such transferor, spouse or domestic partner, or children of the
5 transferor or the transferor's spouse or domestic partner voluntarily
6 transfer stock in the transferee corporation or interest in the
7 transferee partnership capital, as the case may be, to other than
8 (~~(+1)~~) (i) the transferor and/or the transferor's spouse or domestic
9 partner or children of the transferor or the transferor's spouse or
10 domestic partner, (~~(+2)~~) (ii) a trust having the transferor and/or the
11 transferor's spouse or domestic partner or children of the transferor
12 or the transferor's spouse or domestic partner as the only
13 beneficiaries at the time of the transfer to the trust, or (~~(+3)~~)
14 (iii) a corporation or partnership wholly owned by the original
15 transferor and/or the transferor's spouse or domestic partner or
16 children of the transferor or the transferor's spouse or domestic
17 partner, within three years of the original transfer to which this
18 exemption applies, and the tax on the subsequent transfer has not been
19 paid within sixty days of becoming due, excise taxes (~~(shall)~~) become
20 due and payable on the original transfer as otherwise provided by law.

21 (p)(i) A transfer that for federal income tax purposes does not
22 involve the recognition of gain or loss for entity formation,
23 liquidation or dissolution, and reorganization, including but not
24 limited to nonrecognition of gain or loss because of application of
25 (~~(section)~~) 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the
26 internal revenue code of 1986, as amended.

27 (ii) However, the transfer described in (p)(i) of this subsection
28 cannot be preceded or followed within a twelve-month period by another
29 transfer or series of transfers, that, when combined with the otherwise
30 exempt transfer or transfers described in (p)(i) of this subsection,
31 results in the transfer of a controlling interest in the entity for
32 valuable consideration, and in which one or more persons previously
33 holding a controlling interest in the entity receive cash or property
34 in exchange for any interest the person or persons acting in concert
35 hold in the entity. This subsection (3)(p)(ii) does not apply to that
36 part of the transfer involving property received that is the real
37 property interest that the person or persons originally contributed to
38 the entity or when one or more persons who did not contribute real

1 property or belong to the entity at a time when real property was
2 purchased receive cash or personal property in exchange for that person
3 or persons' interest in the entity. The real estate excise tax under
4 this subsection (3)(p)(ii) is imposed upon the person or persons who
5 previously held a controlling interest in the entity.

6 (q) A qualified sale of a manufactured/mobile home community, as
7 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
8 but before December 31, 2018.

9 **Sec. 207.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
10 to read as follows:

11 (1) As used in this chapter, the term "controlling interest" has
12 the following meaning:

13 ~~((1))~~ (a) In the case of a corporation, either fifty percent or
14 more of the total combined voting power of all classes of stock of the
15 corporation entitled to vote, or fifty percent of the capital, profits,
16 or beneficial interest in the voting stock of the corporation; and

17 ~~((2))~~ (b) In the case of a partnership, association, trust, or
18 other entity, fifty percent or more of the capital, profits, or
19 beneficial interest in such partnership, association, trust, or other
20 entity.

21 (2) The department may, at the department's option, enforce the
22 obligation of the seller under this chapter as provided in this
23 subsection (2):

24 (a) In the transfer or acquisition of a controlling interest as
25 defined in subsection (1)(a) of this section, either against the
26 corporation in which a controlling interest is transferred or acquired,
27 against the person or persons who acquired the controlling interest in
28 the corporation or, when the corporation is not a publicly traded
29 company, against the person or persons who transferred the controlling
30 interest in the corporation; and

31 (b) In the transfer or acquisition of a controlling interest as
32 defined in subsection (1)(b) of this section, either against the entity
33 in which a controlling interest is transferred or acquired or against
34 the person or persons who transferred or acquired the controlling
35 interest in the entity.

1 **Sec. 208.** RCW 82.45.070 and 1969 ex.s. c 223 s 28A.45.070 are each
2 amended to read as follows:

3 The tax (~~herein~~) provided for in this chapter and any interest or
4 penalties thereon (~~shall be~~) is a specific lien upon each (~~piece~~)
5 parcel of real property located in this state that is either sold or
6 that is owned by an entity in which a controlling interest has been
7 transferred or acquired. The lien attaches from the time of sale until
8 the tax (~~shall have been~~) is paid, which lien may be enforced in the
9 manner prescribed for the foreclosure of mortgages.

10 **Sec. 209.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
11 read as follows:

12 (1) The tax levied under this chapter (~~shall be~~) is the
13 obligation of the seller and the department (~~of revenue~~) may, at the
14 department's option, enforce the obligation through an action of debt
15 against the seller or the department may proceed in the manner
16 prescribed for the foreclosure of mortgages (~~and resort to~~). The
17 department's use of one course of enforcement (~~shall~~) is not (~~be~~)
18 an election not to pursue the other.

19 (2) For purposes of this section and notwithstanding any other
20 provisions of law, the seller is the parent corporation of a wholly
21 owned subsidiary, when such subsidiary is the transferor to a third-
22 party transferee and the subsidiary is dissolved before paying the tax
23 imposed under this chapter.

24 **Sec. 210.** RCW 82.45.100 and 2007 c 111 s 112 are each amended to
25 read as follows:

26 (1) Payment of the tax imposed under this chapter is due and
27 payable immediately at the time of sale, and if not paid within one
28 month thereafter (~~shall~~) will bear interest from the time of sale
29 until the date of payment.

30 (a) Interest imposed before January 1, 1999, (~~shall be~~) is
31 computed at the rate of one percent per month.

32 (b) Interest imposed after December 31, 1998, (~~shall be~~) is
33 computed on a monthly basis at the rate as computed under RCW
34 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
35 first day of January of each year for use in computing interest for
36 that calendar year. The department (~~of revenue shall~~) must provide

1 written notification to the county treasurers of the variable rate on
2 or before December 1st of the year preceding the calendar year in which
3 the rate applies.

4 (2) In addition to the interest described in subsection (1) of this
5 section, if the payment of any tax is not received by the county
6 treasurer or the department of revenue, as the case may be, within one
7 month of the date due, there (~~shall be~~) is assessed a penalty of five
8 percent of the amount of the tax; if the tax is not received within two
9 months of the date due, there (~~shall~~) will be assessed a total
10 penalty of ten percent of the amount of the tax; and if the tax is not
11 received within three months of the date due, there (~~shall~~) will be
12 assessed a total penalty of twenty percent of the amount of the tax.
13 The payment of the penalty described in this subsection (~~shall be~~) is
14 collectible from the seller only, and RCW 82.45.070 does not apply to
15 the penalties described in this subsection.

16 (3) If the tax imposed under this chapter is not received by the
17 due date, the transferee (~~shall be~~) is personally liable for the tax,
18 along with any interest as provided in subsection (1) of this section,
19 unless(~~+~~

20 ~~(a))~~) an instrument evidencing the sale is recorded in the official
21 real property records of the county in which the property conveyed is
22 located(~~;-or~~

23 ~~(b) Either the transferor or transferee notifies the department of~~
24 ~~revenue in writing of the occurrence of the sale within thirty days~~
25 ~~following the date of the sale)).~~

26 (4) If upon examination of any affidavits or from other information
27 obtained by the department or its agents it appears that all or a
28 portion of the tax is unpaid, the department (~~shall~~) must assess
29 against the taxpayer the additional amount found to be due plus
30 interest and penalties as provided in subsections (1) and (2) of this
31 section. The department (~~shall~~) must notify the taxpayer by mail, or
32 electronically as provided in RCW 82.32.135, of the additional amount
33 and the same (~~shall~~) becomes due and (~~shall~~) must be paid within
34 thirty days from the date of the notice, or within such further time as
35 the department may provide.

36 (5) No assessment or refund may be made by the department more than
37 four years after the date of sale except upon a showing of:

38 (a) Fraud or misrepresentation of a material fact by the taxpayer;

1 (b) A failure by the taxpayer to record documentation of a sale or
2 otherwise report the sale to the county treasurer; or

3 (c) A failure of the transferor or transferee to report the sale
4 under RCW 82.45.090(2).

5 (6) Penalties collected on taxes due under this chapter under
6 subsection (2) of this section and RCW 82.32.090 (2) through (7)
7 (~~shall~~) must be deposited in the housing trust fund as described in
8 chapter 43.185 RCW.

9 **Sec. 211.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
10 read as follows:

11 (1) An organization that fails to report a transfer of the
12 controlling interest in the organization under RCW 43.07.390 to the
13 secretary of state and is later determined to be subject to real estate
14 excise taxes due to the transfer, (~~shall-be~~) is subject to the
15 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
16 82.32.090(~~(+6)~~) (7).

17 (2) Subsection (1) of this section also applies to the failure to
18 report to the secretary of state the granting of an option to acquire
19 an interest in the organization if the exercise of the option would
20 result in a sale as defined in RCW 82.45.010(2).

21 **Sec. 212.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
22 read as follows:

23 (1)(a) The secretary of state (~~shall~~) must adopt rules requiring
24 any entity that is required to file an annual report with the secretary
25 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
26 disclose: (i) Any transfer (~~in~~) of the controlling interest (~~of~~)
27 in the entity (~~and any interest in real property~~); and (ii) the
28 granting of any option to acquire an interest in the entity if the
29 exercise of the option would result in a sale as defined in RCW
30 82.45.010(2).

31 (b) The disclosure requirement in this subsection only applies to
32 entities owning an interest in real property located in this state.

33 (2) This information (~~shall~~) must be made available to the
34 department of revenue upon request for the purposes of tracking the
35 transfer of the controlling interest in entities owning real property

1 and to determine when the real estate excise tax is applicable in such
2 cases.

3 (3) For the purposes of this section, "controlling interest" has
4 the same meaning as provided in RCW 82.45.033.

5 **PART III**

6 **Direct Seller Business and Occupation Tax Exemption**

7 NEW SECTION. **Sec. 301.** (1) In 1983, the legislature provided a
8 business and occupation tax exemption in RCW 82.04.423 for certain out-
9 of-state sellers that sold consumer products exclusively to or through
10 a direct seller's representative, which was codified in RCW 82.04.423.
11 The intent of the legislature in enacting this exemption was to provide
12 a narrow exemption for out-of-state businesses engaged in direct sales
13 of consumer products, typically accomplished through in-home parties or
14 door-to-door selling.

15 (2) In *Dot Foods, Inc. v. Dep't of Revenue*, 166 Wn.2d 912 (2009),
16 the Washington state supreme court held that the exemption in RCW
17 82.04.423 applied to a taxpayer: (a) That sold nonconsumer products
18 through its representative in addition to consumer products; and (b)
19 whose consumer products were ultimately sold at retail in permanent
20 retail establishments. This decision raises questions about the
21 taxpayers intended to benefit from the narrow exemption in RCW
22 82.04.432.

23 (3) The legislature recognizes that some out-of-state businesses
24 selling consumer products in this state may be eligible for the
25 exemption under RCW 82.04.423 under the broadened interpretation or
26 could easily restructure their business operations to qualify for the
27 exemption. The legislature further finds that optimal tax policy does
28 not provide favorable treatment to out-of-state businesses, which a
29 broadened interpretation of RCW 82.04.423 could lead to; but rather,
30 the best tax policy is to have equitable tax treatment for businesses,
31 both within and without the state.

32 (4) Therefore, the legislature finds that it is necessary to
33 reaffirm the legislature's intent in establishing the direct sellers'
34 exemption by amending RCW 82.04.423 retroactively to conform the
35 exemption to the original intent of the legislature and by

1 prospectively ending the direct sellers' exemption effective July 1,
2 2010.

3 **Sec. 302.** RCW 82.04.423 and 1983 1st ex.s. c 66 s 5 are each
4 amended to read as follows:

5 (1) Prior to July 1, 2010, this chapter ((shall)) does not apply to
6 any person in respect to gross income derived from the business of
7 making sales at wholesale or retail if such person:

8 (a) Does not own or lease real property within this state; and

9 (b) Does not regularly maintain a stock of tangible personal
10 property in this state for sale in the ordinary course of business; and

11 (c) Is not a corporation incorporated under the laws of this state;
12 and

13 (d) Makes sales in this state exclusively to or through a direct
14 seller's representative.

15 (2) For purposes of this section, the term "direct seller's
16 representative" means a person who buys only consumer products on a
17 buy-sell basis or a deposit-commission basis for resale, by the buyer
18 or any other person, in the home or otherwise than in a permanent
19 retail establishment, or who sells at retail, or solicits the sale at
20 retail of, only consumer products in the home or otherwise than in a
21 permanent retail establishment; and

22 (a) Substantially all of the remuneration paid to such person,
23 whether or not paid in cash, for the performance of services described
24 in this subsection is directly related to sales or other output,
25 including the performance of services, rather than the number of hours
26 worked; and

27 (b) The services performed by the person are performed pursuant to
28 a written contract between such person and the person for whom the
29 services are performed and such contract provides that the person will
30 not be treated as an employee with respect to such purposes for federal
31 tax purposes.

32 (3) Nothing in this section ((shall)) may be construed to imply
33 that a person exempt from tax under this section was engaged in a
34 business activity taxable under this chapter prior to ((the enactment
35 of this section)) August 23, 1983.

PART IV

**Business and Occupation Tax Preferences for Manufacturers of Products
Derived from Certain Agricultural Products**

NEW SECTION. **Sec. 401.** (1)(a) In 1967, the legislature authorized a preferential business and occupation tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale. The Washington state supreme court interpreted RCW 82.04.260(4), in *AgriLink Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005), holding the preferential business and occupation tax rate on the slaughtering, breaking, and/or processing of perishable meat products applied to the processing of perishable meat products into nonperishable finished products, such as canned food.

(b) In this act, the legislature intends to ensure that the exemption applies to activities such as slaughtering, breaking, and/or processing perishable meat products and/or selling such products at wholesale by requiring that the end product be a perishable meat product; a nonperishable meat product that is comprised primarily of animal carcass by weight or volume, other than a canned meat product; or a meat by-product.

(2) The legislature finds that the rationale of the *AgriLink* decision, if applied to these tax preferences, could result in preferential tax treatment for any processed food product that contained any fresh fruit or vegetable as an ingredient, however small the amount. Therefore, the legislature intends, by this act, to provide direction on its policy regarding preferential tax treatment for these activities.

(a) A business and occupation tax exemption is provided for (i) manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, and (ii) selling such products at wholesale by the manufacturer to purchasers who transport the goods out of state in the ordinary course of business. This exemption expires July 1, 2012, and is replaced by a preferential business and occupation tax rate.

(b) The legislature intends to narrow the tax preference provided to fruit and vegetable manufacturers by requiring that the end product be comprised either (i) exclusively of fruits and/or vegetables, or (ii) of any combination of fruits, vegetables, and certain other

1 substances that, cumulatively, may not exceed the amount of fruits and
2 vegetables contained in the product measured by weight or volume.

3 NEW SECTION. **Sec. 402.** A new section is added to chapter 82.04
4 RCW to read as follows:

5 (1) Upon every person engaging within this state in the business of
6 manufacturing:

7 (a) Perishable meat products, by slaughtering, breaking, or
8 processing, if the finished product is a perishable meat product; as to
9 such persons the tax imposed is equal to the value of the perishable
10 meat products manufactured, or, in the case of a processor for hire,
11 the gross income of the business, multiplied by the rate of 0.138
12 percent;

13 (b) Meat products, by dehydration, curing, smoking, or any
14 combination of these activities, if the finished meat products are not
15 canned; as to such persons the tax imposed is equal to the value of the
16 meat products manufactured, or, in the case of a processor for hire,
17 the gross income of the business, multiplied by the rate of 0.138
18 percent;

19 (c) Hides, tallow, meat meal, and other similar meat by-products,
20 if such products are derived in part from animals and manufactured in
21 a rendering plant licensed under chapter 16.68 RCW; as to such persons
22 the tax imposed is equal to the value of the products manufactured, or,
23 in the case of a processor for hire, the gross income of the business,
24 multiplied by the rate of 0.138 percent.

25 (2) Upon every person engaging within this state in the business of
26 selling at wholesale:

27 (a) Perishable meat products; as to such persons the tax imposed is
28 equal to the gross proceeds derived from such sales multiplied by the
29 rate of 0.138 percent;

30 (b) Meat products that have been manufactured by the seller by
31 dehydration, curing, smoking, or any combination of such activities, if
32 the finished meat products are not canned; as to such persons the tax
33 imposed is equal to the gross proceeds derived from such sales
34 multiplied by the rate of 0.138 percent;

35 (c) Hides, tallow, meat meal, and other similar meat by-products,
36 if such products are derived in part from animals and manufactured by

1 the seller in a rendering plant; as to such persons the tax imposed is
2 equal to the gross proceeds derived from such sales multiplied by the
3 rate of 0.138 percent.

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

6 (a) "Animal" means all members of the animal kingdom except humans,
7 fish, and insects.

8 (b) "Carcass" means all or any parts, including viscera, of a
9 slaughtered animal.

10 (c) "Fish" means any water-breathing animal, including shellfish.

11 (d) "Hide" means any unprocessed animal pelt or skin.

12 (e)(i) "Meat products" means:

13 (A) Products comprised exclusively of animal carcass; and

14 (B) Except as provided in (e)(ii) of this subsection (3), products,
15 such as jerky, sausage, and other cured meat products, that are
16 comprised primarily of animal carcass by weight or volume and may also
17 contain water; nitrates; nitrites; acids; binders and extenders;
18 natural or synthetic casings; colorings; flavorings such as soy sauce,
19 liquid smoke, seasonings, citric acid, sugar, molasses, corn syrup, and
20 vinegar; and similar substances.

21 (ii) "Meat products" does not include products containing any
22 cereal grains or cereal-grain products, dairy products, legumes and
23 legume products, fruit or vegetable products as defined in RCW
24 82.04.260, and similar ingredients, unless the ingredient is used as a
25 flavoring. For purposes of this subsection, "flavoring" means a
26 substance that contains the flavoring constituents derived from a
27 spice, fruit or fruit juice, vegetable or vegetable juice, edible
28 yeast, herb, bark, bud, root, leaf, or any other edible substance of
29 plant origin, whose primary function in food is flavoring or seasoning
30 rather than nutritional, and which may legally appear as "natural
31 flavor," "flavor," or "flavorings" in the ingredient statement on the
32 label of the meat product.

33 (iii) "Meat products" includes only products that are intended for
34 human consumption as food or animal consumption as feed.

35 (f) "Perishable" means having a high risk of spoilage within thirty
36 days of manufacture without any refrigeration or freezing.

37 (g) "Rendering plant" means any place of business or location where

1 dead animals or any part or portion thereof, or packing house refuse,
2 are processed for the purpose of obtaining the hide, skin, grease
3 residue, or any other by-product whatsoever.

4 **Sec. 403.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
5 read as follows:

6 (1) This chapter (~~shall~~) does not apply to the value of products
7 or the gross proceeds of sales derived from:

8 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
9 preserving, freezing, processing, or dehydrating fresh fruits or
10 vegetables; or

11 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
12 manufactured by the seller by canning, preserving, freezing,
13 processing, or dehydrating fresh fruits or vegetables and sold to
14 purchasers who transport in the ordinary course of business the goods
15 out of this state. A person taking an exemption under this subsection
16 (1)(b) must keep and preserve records for the period required by RCW
17 82.32.070 establishing that the goods were transported by the purchaser
18 in the ordinary course of business out of this state.

19 (2)(a) "Fruit or vegetable products" means:

20 (i) Products comprised exclusively of fruits, vegetables, or both;
21 and

22 (ii) Products comprised of fruits, vegetables, or both, and which
23 may also contain water, sugar, salt, seasonings, preservatives,
24 binders, stabilizers, flavorings, yeast, and similar substances.
25 However, the amount of all ingredients contained in the product, other
26 than fruits, vegetables, and water, may not exceed the amount of fruits
27 and vegetables contained in the product measured by weight or volume.

28 (b) "Fruit or vegetable products" includes only products that are
29 intended for human consumption as food or animal consumption as feed.

30 (3) This section expires July 1, 2012.

31 **Sec. 404.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
32 2009 c 162 s 34 are each reenacted and amended to read as follows:

33 (1) Upon every person engaging within this state in the business of
34 manufacturing:

35 (a) Wheat into flour, barley into pearl barley, soybeans into
36 soybean oil, canola into canola oil, canola meal, or canola by-

1 products, or sunflower seeds into sunflower oil; as to such persons the
2 amount of tax with respect to such business (~~(shall be)~~) is equal to
3 the value of the flour, pearl barley, oil, canola meal, or canola by-
4 product manufactured, multiplied by the rate of 0.138 percent;

5 (b) Beginning July 1, 2012, seafood products that remain in a raw,
6 raw frozen, or raw salted state at the completion of the manufacturing
7 by that person; or selling manufactured seafood products that remain in
8 a raw, raw frozen, or raw salted state at the completion of the
9 manufacturing, to purchasers who transport in the ordinary course of
10 business the goods out of this state; as to such persons the amount of
11 tax with respect to such business (~~(shall be)~~) is equal to the value of
12 the products manufactured or the gross proceeds derived from such
13 sales, multiplied by the rate of 0.138 percent. Sellers must keep and
14 preserve records for the period required by RCW 82.32.070 establishing
15 that the goods were transported by the purchaser in the ordinary course
16 of business out of this state;

17 (c) Beginning July 1, 2012, dairy products that as of September 20,
18 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
19 including by-products from the manufacturing of the dairy products such
20 as whey and casein; or selling the same to purchasers who transport in
21 the ordinary course of business the goods out of state; as to such
22 persons the tax imposed (~~(shall be)~~) is equal to the value of the
23 products manufactured or the gross proceeds derived from such sales
24 multiplied by the rate of 0.138 percent. Sellers must keep and
25 preserve records for the period required by RCW 82.32.070 establishing
26 that the goods were transported by the purchaser in the ordinary course
27 of business out of this state;

28 (d)(i) Beginning July 1, 2012, fruit(~~(s)~~) or vegetable(~~(s)~~)
29 products by canning, preserving, freezing, processing, or dehydrating
30 fresh fruits or vegetables, or selling at wholesale fruit(~~(s)~~) or
31 vegetable(~~(s)~~) products manufactured by the seller by canning,
32 preserving, freezing, processing, or dehydrating fresh fruits or
33 vegetables and sold to purchasers who transport in the ordinary course
34 of business the goods out of this state; as to such persons the amount
35 of tax with respect to such business (~~(shall be)~~) is equal to the value
36 of the products manufactured or the gross proceeds derived from such
37 sales multiplied by the rate of 0.138 percent. Sellers must keep and

1 preserve records for the period required by RCW 82.32.070 establishing
2 that the goods were transported by the purchaser in the ordinary course
3 of business out of this state;

4 (ii) For purposes of this subsection, "fruit or vegetable products"
5 means:

6 (A) Products comprised exclusively of fruits, vegetables, or both;
7 or

8 (B) Products comprised of fruits, vegetables, or both, and which
9 may also contain water, sugar, salt, seasonings, preservatives,
10 binders, stabilizers, flavorings, yeast, and similar substances.
11 However, the amount of all ingredients contained in the product, other
12 than fruits, vegetables, and water, may not exceed the amount of fruits
13 and vegetables contained in the product measured by weight or volume;

14 (iii) "Fruit and vegetable products" includes only products that
15 are intended for human consumption as food or animal consumption as
16 feed;

17 (e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel
18 feedstock, as those terms are defined in RCW 82.29A.135; as to such
19 persons the amount of tax with respect to the business (~~shall be~~) is
20 equal to the value of alcohol fuel, biodiesel fuel, or biodiesel
21 feedstock manufactured, multiplied by the rate of 0.138 percent; and

22 (f) Alcohol fuel or wood biomass fuel, as those terms are defined
23 in RCW 82.29A.135; as to such persons the amount of tax with respect to
24 the business (~~shall be~~) is equal to the value of alcohol fuel or wood
25 biomass fuel manufactured, multiplied by the rate of 0.138 percent.

26 (2) Upon every person engaging within this state in the business of
27 splitting or processing dried peas; as to such persons the amount of
28 tax with respect to such business (~~shall be~~) is equal to the value of
29 the peas split or processed, multiplied by the rate of 0.138 percent.

30 (3) Upon every nonprofit corporation and nonprofit association
31 engaging within this state in research and development, as to such
32 corporations and associations, the amount of tax with respect to such
33 activities (~~shall be~~) is equal to the gross income derived from such
34 activities multiplied by the rate of 0.484 percent.

35 (4) (~~Upon every person engaging within this state in the business~~
36 ~~of slaughtering, breaking and/or processing perishable meat products~~
37 ~~and/or selling the same at wholesale only and not at retail; as to such~~

1 ~~persons the tax imposed shall be equal to the gross proceeds derived~~
2 ~~from such sales multiplied by the rate of 0.138 percent.~~

3 ~~(5))~~ Upon every person engaging within this state in the business
4 of acting as a travel agent or tour operator; as to such persons the
5 amount of the tax with respect to such activities (~~shall be~~) is equal
6 to the gross income derived from such activities multiplied by the rate
7 of 0.275 percent.

8 ~~((6))~~ (5) Upon every person engaging within this state in
9 business as an international steamship agent, international customs
10 house broker, international freight forwarder, vessel and/or cargo
11 charter broker in foreign commerce, and/or international air cargo
12 agent; as to such persons the amount of the tax with respect to only
13 international activities (~~shall be~~) is equal to the gross income
14 derived from such activities multiplied by the rate of 0.275 percent.

15 ~~((7))~~ (6) Upon every person engaging within this state in the
16 business of stevedoring and associated activities pertinent to the
17 movement of goods and commodities in waterborne interstate or foreign
18 commerce; as to such persons the amount of tax with respect to such
19 business (~~shall be~~) is equal to the gross proceeds derived from such
20 activities multiplied by the rate of 0.275 percent. Persons subject to
21 taxation under this subsection (~~shall be~~) are exempt from payment of
22 taxes imposed by chapter 82.16 RCW for that portion of their business
23 subject to taxation under this subsection. Stevedoring and associated
24 activities pertinent to the conduct of goods and commodities in
25 waterborne interstate or foreign commerce are defined as all activities
26 of a labor, service or transportation nature whereby cargo may be
27 loaded or unloaded to or from vessels or barges, passing over, onto or
28 under a wharf, pier, or similar structure; cargo may be moved to a
29 warehouse or similar holding or storage yard or area to await further
30 movement in import or export or may move to a consolidation freight
31 station and be stuffed, unstuffed, containerized, separated or
32 otherwise segregated or aggregated for delivery or loaded on any mode
33 of transportation for delivery to its consignee. Specific activities
34 included in this definition are: Wharfage, handling, loading,
35 unloading, moving of cargo to a convenient place of delivery to the
36 consignee or a convenient place for further movement to export mode;
37 documentation services in connection with the receipt, delivery,
38 checking, care, custody and control of cargo required in the transfer

1 of cargo; imported automobile handling prior to delivery to consignee;
2 terminal stevedoring and incidental vessel services, including but not
3 limited to plugging and unplugging refrigerator service to containers,
4 trailers, and other refrigerated cargo receptacles, and securing ship
5 hatch covers.

6 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
7 business of disposing of low-level waste, as defined in RCW 43.145.010;
8 as to such persons the amount of the tax with respect to such business
9 ~~((shall be))~~ is equal to the gross income of the business, excluding
10 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
11 3.3 percent.

12 (b) If the gross income of the taxpayer is attributable to
13 activities both within and without this state, the gross income
14 attributable to this state ~~((shall))~~ must be determined in accordance
15 with the methods of apportionment required under RCW 82.04.460.

16 ~~((+9))~~ (8) Upon every person engaging within this state as an
17 insurance producer or title insurance agent licensed under chapter
18 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
19 to such persons, the amount of the tax with respect to such licensed
20 activities ~~((shall be))~~ is equal to the gross income of such business
21 multiplied by the rate of 0.484 percent.

22 ~~((+10))~~ (9) Upon every person engaging within this state in
23 business as a hospital, as defined in chapter 70.41 RCW, that is
24 operated as a nonprofit corporation or by the state or any of its
25 political subdivisions, as to such persons, the amount of tax with
26 respect to such activities ~~((shall be))~~ is equal to the gross income of
27 the business multiplied by the rate of 0.75 percent through June 30,
28 1995, and 1.5 percent thereafter.

29 ~~((+11))~~ (10)(a) Beginning October 1, 2005, upon every person
30 engaging within this state in the business of manufacturing commercial
31 airplanes, or components of such airplanes, or making sales, at retail
32 or wholesale, of commercial airplanes or components of such airplanes,
33 manufactured by the seller, as to such persons the amount of tax with
34 respect to such business ~~((shall))~~, in the case of manufacturers,
35 ~~((be))~~ is equal to the value of the product manufactured and the gross
36 proceeds of sales of the product manufactured, or in the case of
37 processors for hire, ~~((be))~~ is equal to the gross income of the
38 business, multiplied by the rate of:

1 (i) 0.4235 percent from October 1, 2005, through (~~the later of~~)
2 June 30, 2007; and

3 (ii) 0.2904 percent beginning July 1, 2007.

4 (b) Beginning July 1, 2008, upon every person who is not eligible
5 to report under the provisions of (a) of this subsection (~~(11)~~) (10)
6 and is engaging within this state in the business of manufacturing
7 tooling specifically designed for use in manufacturing commercial
8 airplanes or components of such airplanes, or making sales, at retail
9 or wholesale, of such tooling manufactured by the seller, as to such
10 persons the amount of tax with respect to such business (~~shall~~), in
11 the case of manufacturers, (~~be~~) is equal to the value of the product
12 manufactured and the gross proceeds of sales of the product
13 manufactured, or in the case of processors for hire, (~~be~~) is equal to
14 the gross income of the business, multiplied by the rate of 0.2904
15 percent.

16 (c) For the purposes of this subsection (~~(11)~~) (10), "commercial
17 airplane" and "component" have the same meanings as provided in RCW
18 82.32.550.

19 (d) In addition to all other requirements under this title, a
20 person eligible for the tax rate under this subsection (~~(11)~~) (10)
21 must report as required under RCW 82.32.545.

22 (e) This subsection (~~(11)~~) (10) does not apply on and after July
23 1, 2024.

24 (~~(12)~~) (11)(a) Until July 1, 2024, upon every person engaging
25 within this state in the business of extracting timber or extracting
26 for hire timber; as to such persons the amount of tax with respect to
27 the business (~~shall~~), in the case of extractors, (~~be~~) is equal to
28 the value of products, including by-products, extracted, or in the case
29 of extractors for hire, (~~be~~) is equal to the gross income of the
30 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
31 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
32 June 30, 2024.

33 (b) Until July 1, 2024, upon every person engaging within this
34 state in the business of manufacturing or processing for hire: (i)
35 Timber into timber products or wood products; or (ii) timber products
36 into other timber products or wood products; as to such persons the
37 amount of the tax with respect to the business (~~shall~~), in the case
38 of manufacturers, (~~be~~) is equal to the value of products, including

1 by-products, manufactured, or in the case of processors for hire,
2 ((be)) is equal to the gross income of the business, multiplied by the
3 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
4 0.2904 percent from July 1, 2007, through June 30, 2024.

5 (c) Until July 1, 2024, upon every person engaging within this
6 state in the business of selling at wholesale: (i) Timber extracted by
7 that person; (ii) timber products manufactured by that person from
8 timber or other timber products; or (iii) wood products manufactured by
9 that person from timber or timber products; as to such persons the
10 amount of the tax with respect to the business ((shall be)) is equal to
11 the gross proceeds of sales of the timber, timber products, or wood
12 products multiplied by the rate of 0.4235 percent from July 1, 2006,
13 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
14 June 30, 2024.

15 (d) Until July 1, 2024, upon every person engaging within this
16 state in the business of selling standing timber; as to such persons
17 the amount of the tax with respect to the business ((shall be)) is
18 equal to the gross income of the business multiplied by the rate of
19 0.2904 percent. For purposes of this subsection ((+12+)) (11)(d),
20 "selling standing timber" means the sale of timber apart from the land,
21 where the buyer is required to sever the timber within thirty months
22 from the date of the original contract, regardless of the method of
23 payment for the timber and whether title to the timber transfers
24 before, upon, or after severance.

25 (e) For purposes of this subsection, the following definitions
26 apply:

27 (i) "Biocomposite surface products" means surface material products
28 containing, by weight or volume, more than fifty percent recycled paper
29 and that also use nonpetroleum-based phenolic resin as a bonding agent.

30 (ii) "Paper and paper products" means products made of interwoven
31 cellulosic fibers held together largely by hydrogen bonding. "Paper
32 and paper products" includes newsprint; office, printing, fine, and
33 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
34 kraft bag, construction, and other kraft industrial papers; paperboard,
35 liquid packaging containers, containerboard, corrugated, and solid-
36 fiber containers including linerboard and corrugated medium; and
37 related types of cellulosic products containing primarily, by weight or
38 volume, cellulosic materials. "Paper and paper products" does not

1 include books, newspapers, magazines, periodicals, and other printed
2 publications, advertising materials, calendars, and similar types of
3 printed materials.

4 (iii) "Recycled paper" means paper and paper products having fifty
5 percent or more of their fiber content that comes from postconsumer
6 waste. For purposes of this subsection (~~((+12+))~~) (11)(e)(iii),
7 "postconsumer waste" means a finished material that would normally be
8 disposed of as solid waste, having completed its life cycle as a
9 consumer item.

10 (iv) "Timber" means forest trees, standing or down, on privately or
11 publicly owned land. "Timber" does not include Christmas trees that
12 are cultivated by agricultural methods or short-rotation hardwoods as
13 defined in RCW 84.33.035.

- 14 (v) "Timber products" means:
- 15 (A) Logs, wood chips, sawdust, wood waste, and similar products
16 obtained wholly from the processing of timber, short-rotation hardwoods
17 as defined in RCW 84.33.035, or both;
 - 18 (B) Pulp, including market pulp and pulp derived from recovered
19 paper or paper products; and
 - 20 (C) Recycled paper, but only when used in the manufacture of
21 biocomposite surface products.

22 (vi) "Wood products" means paper and paper products; dimensional
23 lumber; engineered wood products such as particleboard, oriented strand
24 board, medium density fiberboard, and plywood; wood doors; wood
25 windows; and biocomposite surface products.

26 (~~((+13+))~~) (12) Upon every person engaging within this state in
27 inspecting, testing, labeling, and storing canned salmon owned by
28 another person, as to such persons, the amount of tax with respect to
29 such activities (~~((shall be))~~) is equal to the gross income derived from
30 such activities multiplied by the rate of 0.484 percent.

31 (~~((+14+))~~) (13) Upon every person engaging within this state in the
32 business of printing a newspaper, publishing a newspaper, or both, the
33 amount of tax on such business is equal to the gross income of the
34 business multiplied by the rate of 0.2904 percent.

35 **Sec. 405.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
36 as follows:

37 (1) Upon every person engaging within this state in the business of

1 making sales at retail, except persons taxable as retailers under other
2 provisions of this chapter, as to such persons, the amount of tax with
3 respect to such business (~~(shall be)~~) is equal to the gross proceeds of
4 sales of the business, multiplied by the rate of 0.471 percent.

5 (2) Upon every person engaging within this state in the business of
6 making sales at retail that are exempt from the tax imposed under
7 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
8 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11+)~~) (10) or
9 subsection (3) of this section, as to such persons, the amount of tax
10 with respect to such business (~~(shall be)~~) is equal to the gross
11 proceeds of sales of the business, multiplied by the rate of 0.484
12 percent.

13 (3) Upon every person classified by the federal aviation
14 administration as a federal aviation regulation part 145 certificated
15 repair station and that is engaging within this state in the business
16 of making sales at retail that are exempt from the tax imposed under
17 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
18 82.08.0263, as to such persons, the amount of tax with respect to such
19 business (~~(shall be)~~) is equal to the gross proceeds of sales of the
20 business, multiplied by the rate of .2904 percent.

21 **Sec. 406.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
22 as follows:

23 (1) Upon every person engaging within this state in the business of
24 making sales at retail, except persons taxable as retailers under other
25 provisions of this chapter, as to such persons, the amount of tax with
26 respect to such business (~~(shall be)~~) is equal to the gross proceeds of
27 sales of the business, multiplied by the rate of 0.471 percent.

28 (2) Upon every person engaging within this state in the business of
29 making sales at retail that are exempt from the tax imposed under
30 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
31 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11+)~~) (10), as
32 to such persons, the amount of tax with respect to such business
33 (~~(shall be)~~) is equal to the gross proceeds of sales of the business,
34 multiplied by the rate of 0.484 percent.

35 **Sec. 407.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
36 each reenacted and amended to read as follows:

1 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12+)~~)
2 (11), a surcharge is imposed on those persons who are subject to any of
3 the taxes imposed under RCW 82.04.260(~~(+12+)~~) (11). Except as
4 otherwise provided in this section, the surcharge is equal to 0.052
5 percent. The surcharge is added to the rates provided in RCW
6 82.04.260(~~(+12+)~~) (11) (a), (b), (c), and (d). The surcharge and this
7 section expire July 1, 2024.

8 (2) All receipts from the surcharge imposed under this section
9 (~~shall~~) must be deposited into the forest and fish support account
10 created in RCW 76.09.405.

11 (3)(a) The surcharge imposed under this section (~~shall-be~~) is
12 suspended if:

13 (i) Receipts from the surcharge total at least eight million
14 dollars during any fiscal biennium; or

15 (ii) The office of financial management certifies to the department
16 that the federal government has appropriated at least two million
17 dollars for participation in forest and fish report-related activities
18 by federally recognized Indian tribes located within the geographical
19 boundaries of the state of Washington for any federal fiscal year.

20 (b)(i) The suspension of the surcharge under (a)(i) of this
21 subsection (3) (~~shall~~) takes effect on the first day of the calendar
22 month that is at least thirty days after the end of the month during
23 which the department determines that receipts from the surcharge total
24 at least eight million dollars during the fiscal biennium. The
25 surcharge (~~shall-be~~) is imposed again at the beginning of the
26 following fiscal biennium.

27 (ii) The suspension of the surcharge under (a)(ii) of this
28 subsection (3) (~~shall~~) takes effect on the later of the first day of
29 October of any federal fiscal year for which the federal government
30 appropriates at least two million dollars for participation in forest
31 and fish report-related activities by federally recognized Indian
32 tribes located within the geographical boundaries of the state of
33 Washington, or the first day of a calendar month that is at least
34 thirty days following the date that the office of financial management
35 makes a certification to the department under subsection (5) of this
36 section. The surcharge (~~shall-be~~) is imposed again on the first day
37 of the following July.

1 (4)(a) If, by October 1st of any federal fiscal year, the office of
2 financial management certifies to the department that the federal
3 government has appropriated funds for participation in forest and fish
4 report-related activities by federally recognized Indian tribes located
5 within the geographical boundaries of the state of Washington but the
6 amount of the appropriation is less than two million dollars, the
7 department (~~shall~~) must adjust the surcharge in accordance with this
8 subsection.

9 (b) The department (~~shall~~) must adjust the surcharge by an amount
10 that the department estimates will cause the amount of funds deposited
11 into the forest and fish support account for the state fiscal year that
12 begins July 1st and that includes the beginning of the federal fiscal
13 year for which the federal appropriation is made, to be reduced by
14 twice the amount of the federal appropriation for participation in
15 forest and fish report-related activities by federally recognized
16 Indian tribes located within the geographical boundaries of the state
17 of Washington.

18 (c) Any adjustment in the surcharge (~~shall~~) takes effect at the
19 beginning of a calendar month that is at least thirty days after the
20 date that the office of financial management makes the certification
21 under subsection (5) of this section.

22 (d) The surcharge (~~shall-be~~) is imposed again at the rate
23 provided in subsection (1) of this section on the first day of the
24 following state fiscal year unless the surcharge is suspended under
25 subsection (3) of this section or adjusted for that fiscal year under
26 this subsection.

27 (e) Adjustments of the amount of the surcharge by the department
28 are final and (~~shall~~) may not be used to challenge the validity of
29 the surcharge imposed under this section.

30 (f) The department (~~shall~~) must provide timely notice to affected
31 taxpayers of the suspension of the surcharge or an adjustment of the
32 surcharge.

33 (5) The office of financial management (~~shall~~) must make the
34 certification to the department as to the status of federal
35 appropriations for tribal participation in forest and fish report-
36 related activities.

1 **Sec. 408.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
2 as follows:

3 (1) The amount of tax with respect to a qualified grocery
4 distribution cooperative's sales of groceries or related goods for
5 resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~)
6 section 402 of this act, to customer-owners of the grocery distribution
7 cooperative is equal to the gross proceeds of sales of the grocery
8 distribution cooperative multiplied by the rate of one and one-half
9 percent.

10 (2) A qualified grocery distribution cooperative is allowed a
11 deduction from the gross proceeds of sales of groceries or related
12 goods for resale, excluding items subject to tax under (~~RCW
13 82.04.260(4)~~) section 402 of this act, to customer-owners of the
14 grocery distribution cooperative that is equal to the portion of the
15 gross proceeds of sales for resale that represents the actual cost of
16 the merchandise sold by the grocery distribution cooperative to
17 customer-owners.

18 (3) The definitions in this subsection apply throughout this
19 section unless the context clearly requires otherwise.

20 (a) "Grocery distribution cooperative" means an entity that sells
21 groceries and related items to customer-owners of the grocery
22 distribution cooperative and has customer-owners, in the aggregate, who
23 own a majority of the outstanding ownership interests of the grocery
24 distribution cooperative or of the entity controlling the grocery
25 distribution cooperative. "Grocery distribution cooperative" includes
26 an entity that controls a grocery distribution cooperative.

27 (b) "Qualified grocery distribution cooperative" means:

28 (i) A grocery distribution cooperative that has been determined by
29 a court of record of the state of Washington to be not engaged in
30 wholesaling or making sales at wholesale, within the meaning of RCW
31 82.04.270 or any similar provision of a municipal ordinance that
32 imposes a tax on gross receipts, gross proceeds of sales, or gross
33 income, with respect to purchases made by customer-owners, and
34 subsequently changes its form of doing business to make sales at
35 wholesale of groceries or related items to its customer-owners; or

36 (ii) A grocery distribution cooperative that has acquired
37 substantially all of the assets of a grocery distribution cooperative
38 described in (b)(i) of this subsection.

1 (c) "Customer-owner" means a person who has an ownership interest
2 in a grocery distribution cooperative and purchases groceries and
3 related items at wholesale from that grocery distribution cooperative.

4 (d) "Controlling" means holding fifty percent or more of the voting
5 interests of an entity and having at least equal power to direct or
6 cause the direction of the management and policies of the entity,
7 whether through the ownership of voting securities, by contract, or
8 otherwise.

9 **Sec. 409.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
10 as follows:

11 This chapter does not apply to any sale of standing timber excluded
12 from the definition of "sale" in RCW 82.45.010(3). The definitions in
13 RCW 82.04.260(~~((+12+))~~) (11) apply to this section.

14 **Sec. 410.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
15 each reenacted and amended to read as follows:

16 (1) Every person engaged in activities that are subject to tax
17 under two or more provisions of RCW 82.04.230 through 82.04.298,
18 inclusive, (~~((shall-be))~~) is taxable under each provision applicable to
19 those activities.

20 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
21 82.04.294(2), or 82.04.260 (1) (b), (c), (~~((+4+))~~) or (d), (10), or
22 (11), or (~~((+12+))~~) section 402(2) of this act with respect to selling
23 products in this state, including those persons who are also taxable
24 under RCW 82.04.261, (~~((shall-be))~~) are allowed a credit against those
25 taxes for any (a) manufacturing taxes paid with respect to the
26 manufacturing of products so sold in this state, and/or (b) extracting
27 taxes paid with respect to the extracting of products so sold in this
28 state or ingredients of products so sold in this state. Extracting
29 taxes taken as credit under subsection (3) of this section may also be
30 taken under this subsection, if otherwise allowable under this
31 subsection. The amount of the credit (~~((shall))~~) may not exceed the tax
32 liability arising under this chapter with respect to the sale of those
33 products.

34 (3) Persons taxable as manufacturers under RCW 82.04.240 or
35 82.04.260 (1)(b) or (~~((+12+))~~) (11), including those persons who are also
36 taxable under RCW 82.04.261, (~~((shall-be))~~) are allowed a credit against

1 those taxes for any extracting taxes paid with respect to extracting
2 the ingredients of the products so manufactured in this state. The
3 amount of the credit (~~(shall)~~) may not exceed the tax liability arising
4 under this chapter with respect to the manufacturing of those products.

5 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
6 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~((+4),)~~) (10), or
7 (11), or (~~((+12))~~) section 402(1) of this act, including those persons
8 who are also taxable under RCW 82.04.261, with respect to extracting or
9 manufacturing products in this state (~~(shall be)~~) are allowed a credit
10 against those taxes for any (i) gross receipts taxes paid to another
11 state with respect to the sales of the products so extracted or
12 manufactured in this state, (ii) manufacturing taxes paid with respect
13 to the manufacturing of products using ingredients so extracted in this
14 state, or (iii) manufacturing taxes paid with respect to manufacturing
15 activities completed in another state for products so manufactured in
16 this state. The amount of the credit (~~(shall)~~) may not exceed the tax
17 liability arising under this chapter with respect to the extraction or
18 manufacturing of those products.

19 (5) For the purpose of this section:

20 (a) "Gross receipts tax" means a tax:

21 (i) Which is imposed on or measured by the gross volume of
22 business, in terms of gross receipts or in other terms, and in the
23 determination of which the deductions allowed would not constitute the
24 tax an income tax or value added tax; and

25 (ii) Which is also not, pursuant to law or custom, separately
26 stated from the sales price.

27 (b) "State" means (i) the state of Washington, (ii) a state of the
28 United States other than Washington, or any political subdivision of
29 such other state, (iii) the District of Columbia, and (iv) any foreign
30 country or political subdivision thereof.

31 (c) "Manufacturing tax" means a gross receipts tax imposed on the
32 act or privilege of engaging in business as a manufacturer, and
33 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
34 82.04.2909(1), 82.04.260 (1), (2), (~~((+4),)~~) (10), and (11), (~~(and~~
35 ~~+12))~~) section 402(1) of this act, and 82.04.294(1); (ii) the tax
36 imposed under RCW 82.04.261 on persons who are engaged in business as
37 a manufacturer; and (iii) similar gross receipts taxes paid to other
38 states.

1 (d) "Extracting tax" means a gross receipts tax imposed on the act
2 or privilege of engaging in business as an extractor, and includes (i)
3 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~(+12+)~~)
4 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
5 engaged in business as an extractor; and (iii) similar gross receipts
6 taxes paid to other states.

7 (e) "Business", "manufacturer", "extractor", and other terms used
8 in this section have the meanings given in RCW 82.04.020 through
9 82.04.212, notwithstanding the use of those terms in the context of
10 describing taxes imposed by other states.

11 **Sec. 411.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
12 read as follows:

13 (1) In computing the tax imposed under this chapter, a credit is
14 allowed for property taxes and leasehold excise taxes paid during the
15 calendar year.

16 (2) The credit is equal to:

17 (a)(i)(A) Property taxes paid on buildings, and land upon which the
18 buildings are located, constructed after December 1, 2003, and used
19 exclusively in manufacturing commercial airplanes or components of such
20 airplanes; and

21 (B) Leasehold excise taxes paid with respect to buildings
22 constructed after January 1, 2006, the land upon which the buildings
23 are located, or both, if the buildings are used exclusively in
24 manufacturing commercial airplanes or components of such airplanes; and

25 (C) Property taxes or leasehold excise taxes paid on, or with
26 respect to, buildings constructed after June 30, 2008, the land upon
27 which the buildings are located, or both, and used exclusively for
28 aerospace product development or in providing aerospace services, by
29 persons not within the scope of (a)(i)(A) and (B) of this subsection
30 (2) and are: (I) Engaged in manufacturing tooling specifically
31 designed for use in manufacturing commercial airplanes or their
32 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

33 (ii) Property taxes attributable to an increase in assessed value
34 due to the renovation or expansion, after: (A) December 1, 2003, of a
35 building used exclusively in manufacturing commercial airplanes or
36 components of such airplanes; and (B) June 30, 2008, of buildings used
37 exclusively for aerospace product development or in providing aerospace

1 services, by persons not within the scope of (a)(ii)(A) of this
2 subsection (2) and are: (I) Engaged in manufacturing tooling
3 specifically designed for use in manufacturing commercial airplanes or
4 their components; or (II) taxable under RCW 82.04.290(3) or
5 82.04.250(3); and

6 (b) An amount equal to:

7 (i)(A) Property taxes paid, by persons taxable under RCW
8 82.04.260(~~((+11))~~) (10)(a), on machinery and equipment exempt under RCW
9 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

10 (B) Property taxes paid, by persons taxable under RCW
11 82.04.260(~~((+11))~~) (10)(b), on machinery and equipment exempt under RCW
12 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

13 (C) Property taxes paid, by persons taxable under RCW
14 (~~(82.04.0250(3) - {82.04.250(3)})~~) 82.04.250(3) or 82.04.290(3), on
15 computer hardware, computer peripherals, and software exempt under RCW
16 82.08.975 or 82.12.975 and acquired after June 30, 2008.

17 (ii) For purposes of determining the amount eligible for credit
18 under (i)(A) and (B) of this subsection (2)(b), the amount of property
19 taxes paid is multiplied by a fraction.

20 (~~((+I))~~) (A) The numerator of the fraction is the total taxable
21 amount subject to the tax imposed under RCW 82.04.260(~~((+11))~~) (10) (a)
22 or (b) on the applicable business activities of manufacturing
23 commercial airplanes, components of such airplanes, or tooling
24 specifically designed for use in the manufacturing of commercial
25 airplanes or components of such airplanes.

26 (~~((+II))~~) (B) The denominator of the fraction is the total taxable
27 amount subject to the tax imposed under all manufacturing
28 classifications in chapter 82.04 RCW.

29 (~~((+III))~~) (C) For purposes of both the numerator and denominator of
30 the fraction, the total taxable amount refers to the total taxable
31 amount required to be reported on the person's returns for the calendar
32 year before the calendar year in which the credit under this section is
33 earned. The department may provide for an alternative method for
34 calculating the numerator in cases where the tax rate provided in RCW
35 82.04.260(~~((+11))~~) (10) for manufacturing was not in effect during the
36 full calendar year before the calendar year in which the credit under
37 this section is earned.

1 (~~(IV)~~) (D) No credit is available under (b)(i)(A) or (B) of this
2 subsection (2) if either the numerator or the denominator of the
3 fraction is zero. If the fraction is greater than or equal to nine-
4 tenths, then the fraction is rounded to one.

5 (~~(V)~~) (E) As used in (~~(III)~~) (b)(ii)(C) of this subsection
6 (2)(~~(b)(ii)(C)~~), "returns" means the tax returns for which the tax
7 imposed under this chapter is reported to the department.

8 (3) The definitions in this subsection apply throughout this
9 section, unless the context clearly indicates otherwise.

10 (a) "Aerospace product development" has the same meaning as
11 provided in RCW 82.04.4461.

12 (b) "Aerospace services" has the same meaning given in RCW
13 82.08.975.

14 (c) "Commercial airplane" and "component" have the same meanings as
15 provided in RCW 82.32.550.

16 (4) A credit earned during one calendar year may be carried over to
17 be credited against taxes incurred in a subsequent calendar year, but
18 may not be carried over a second year. No refunds may be granted for
19 credits under this section.

20 (5) In addition to all other requirements under this title, a
21 person taking the credit under this section must report as required
22 under RCW 82.32.545.

23 (6) This section expires July 1, 2024.

24 **Sec. 412.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
25 read as follows:

26 (1) The tax levied by RCW 82.08.020 does not apply to sales, to a
27 printer or publisher, of computer equipment, including repair parts and
28 replacement parts for such equipment, when the computer equipment is
29 used primarily in the printing or publishing of any printed material,
30 or to sales of or charges made for labor and services rendered in
31 respect to installing, repairing, cleaning, altering, or improving the
32 computer equipment. This exemption applies only to computer equipment
33 not otherwise exempt under RCW 82.08.02565.

34 (2) A person taking the exemption under this section must keep
35 records necessary for the department to verify eligibility under this
36 section. This exemption is available only when the purchaser provides

1 the seller with an exemption certificate in a form and manner
2 prescribed by the department. The seller (~~shall~~) must retain a copy
3 of the certificate for the seller's files.

4 (3) The definitions in this subsection (3) apply throughout this
5 section, unless the context clearly requires otherwise.

6 (a) "Computer" has the same meaning as in RCW 82.04.215.

7 (b) "Computer equipment" means a computer and the associated
8 physical components that constitute a computer system, including
9 monitors, keyboards, printers, modems, scanners, pointing devices, and
10 other computer peripheral equipment, cables, servers, and routers.
11 "Computer equipment" also includes digital cameras and computer
12 software.

13 (c) "Computer software" has the same meaning as in RCW 82.04.215.

14 (d) "Primarily" means greater than fifty percent as measured by
15 time.

16 (e) "Printer or publisher" means a person, as defined in RCW
17 82.04.030, who is subject to tax under RCW 82.04.260(~~(+14)~~) (13) or
18 82.04.280(1).

19 (4) "Computer equipment" does not include computer equipment that
20 is used primarily for administrative purposes including but not limited
21 to payroll processing, accounting, customer service, telemarketing, and
22 collection. If computer equipment is used simultaneously for
23 administrative and nonadministrative purposes, the administrative use
24 (~~shall~~) must be disregarded during the period of simultaneous use for
25 purposes of determining whether the computer equipment is used
26 primarily for administrative purposes.

27 **Sec. 413.** RCW 82.32.545 and 2008 c 81 s 10 are each amended to
28 read as follows:

29 (1) The legislature finds that accountability and effectiveness are
30 important aspects of setting tax policy. In order to make policy
31 choices regarding the best use of limited state resources the
32 legislature needs information on how a tax incentive is used.

33 (2)(a) A person who reports taxes under RCW 82.04.260(~~(+11)~~) (10),
34 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit
35 under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and
36 82.04.4463 (~~shall~~) must make an annual report to the department
37 detailing employment, wages, and employer-provided health and

1 retirement benefits for employment positions in Washington. However,
2 persons engaged in manufacturing commercial airplanes or components of
3 such airplanes may report employment, wage, and benefit information per
4 job at the manufacturing site. The report (~~(shall)~~) may not include
5 names of employees. The report (~~(shall)~~) must also detail employment
6 by the total number of full-time, part-time, and temporary positions.
7 The first report filed under this subsection (~~(shall)~~) must include
8 employment, wage, and benefit information for the twelve-month period
9 immediately before first use of a preferential tax rate under RCW
10 82.04.260(~~(+11+)~~) (10), 82.04.250(3), or 82.04.290(3), or tax exemption
11 or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137,
12 84.36.655, and 82.04.4463, unless a survey covering this twelve-month
13 period was filed as required by a statute repealed by chapter 81, Laws
14 of 2008. The report is due by March 31st following any year in which
15 a preferential tax rate under RCW 82.04.260(~~(+11+)~~) (10), 82.04.250(3),
16 or 82.04.290(3), is used, or tax exemption or credit under RCW
17 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463
18 is taken. This information is not subject to the confidentiality
19 provisions of RCW 82.32.330 and may be disclosed to the public upon
20 request.

21 (b) If a person fails to submit an annual report under (a) of this
22 subsection by the due date of the report, the department (~~(shall)~~) must
23 declare the amount of taxes exempted or credited, or reduced in the
24 case of the preferential business and occupation tax rate, for that
25 year to be immediately due and payable. Excise taxes payable under
26 this subsection are subject to interest but not penalties, as provided
27 under this chapter. This information is not subject to the
28 confidentiality provisions of RCW 82.32.330 and may be disclosed to the
29 public upon request.

30 (3) By November 1, 2010, and by November 1, 2023, the fiscal
31 committees of the house of representatives and the senate, in
32 consultation with the department, (~~(shall)~~) must report to the
33 legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp.
34 sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in
35 regard to keeping Washington competitive. The report (~~(shall)~~) must
36 measure the effect of these laws on job retention, net jobs created for
37 Washington residents, company growth, diversification of the state's
38 economy, cluster dynamics, and other factors as the committees select.

1 The reports (~~shall~~) must include a discussion of principles to apply
2 in evaluating whether the legislature should reenact any or all of the
3 tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177,
4 Laws of 2006, and chapter 81, Laws of 2008.

5 **Sec. 414.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
6 read as follows:

7 ~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~
8 ~~first day of the month in which the governor and a manufacturer of~~
9 ~~commercial airplanes sign a memorandum of agreement regarding an~~
10 ~~affirmative final decision to site a significant commercial airplane~~
11 ~~final assembly facility in Washington state. The department shall~~
12 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
13 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
14 ~~appropriate by the department.~~

15 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
16 ~~siting of a significant commercial airplane final assembly facility in~~
17 ~~the state of Washington. If a memorandum of agreement under subsection~~
18 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
19 ~~2003 2nd sp. sess. is null and void.~~

20 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
21 ~~2007.~~

22 ~~(ii) If on December 31, 2007, final assembly of a superefficient~~
23 ~~airplane has not begun in Washington state, the department shall~~
24 ~~provide notice of such to affected taxpayers, the legislature, and~~
25 ~~others as deemed appropriate by the department.~~

26 ~~(2) The definitions in this subsection apply throughout this~~
27 ~~section.~~

28 ~~(a))~~ "Commercial airplane" has its ordinary meaning, which is an
29 airplane certified by the federal aviation administration for
30 transporting persons or property, and any military derivative of such
31 an airplane.

32 ~~((b))~~ (2) "Component" means a part or system certified by the
33 federal aviation administration for installation or assembly into a
34 commercial airplane.

35 ~~((c) "Final assembly of a superefficient airplane" means the~~
36 ~~activity of assembling an airplane from components parts necessary for~~

1 ~~its mechanical operation such that the finished commercial airplane is~~
2 ~~ready to deliver to the ultimate consumer.~~

3 ~~(d) "Significant commercial airplane final assembly facility" means~~
4 ~~a location with the capacity to produce at least thirty six~~
5 ~~superefficient airplanes a year.~~

6 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
7 ~~significant commercial airplane final assembly facility in Washington~~
8 ~~state.~~

9 ~~(f))~~ (3) "Superefficient airplane" means a twin aisle airplane
10 that carries between two hundred and three hundred fifty passengers,
11 with a range of more than seven thousand two hundred nautical miles, a
12 cruising speed of approximately mach .85, and that uses fifteen to
13 twenty percent less fuel than other similar airplanes on the market.

14 **Sec. 415.** RCW 82.32.630 and 2007 c 48 s 6 are each amended to read
15 as follows:

16 (1) The legislature finds that accountability and effectiveness are
17 important aspects of setting tax policy. In order to make policy
18 choices regarding the best use of limited state resources, the
19 legislature needs information on how a tax incentive is used.

20 (2)(a) A person who reports taxes under RCW 82.04.260(~~((12) shall))~~
21 (11) must file a complete annual survey with the department. The
22 survey is due by March 31st following any year in which a person
23 reports taxes under RCW 82.04.260(~~((12))~~) (11). The department may
24 extend the due date for timely filing of annual surveys under this
25 section as provided in RCW 82.32.590. The survey (~~((shall))~~) must
26 include the amount of tax reduced under the preferential rate in RCW
27 82.04.260(~~((12))~~) (11). The survey (~~((shall))~~) must also include the
28 following information for employment positions in Washington:

29 (i) The number of total employment positions;

30 (ii) Full-time, part-time, and temporary employment positions as a
31 percent of total employment;

32 (iii) The number of employment positions according to the following
33 wage bands: Less than thirty thousand dollars; thirty thousand dollars
34 or greater, but less than sixty thousand dollars; and sixty thousand
35 dollars or greater. A wage band containing fewer than three
36 individuals may be combined with another wage band; and

1 (iv) The number of employment positions that have employer-provided
2 medical, dental, and retirement benefits, by each of the wage bands.

3 (b) The first survey filed under this subsection (~~shall~~) must
4 include employment, wage, and benefit information for the twelve-month
5 period immediately before first use of a preferential tax rate under
6 RCW 82.04.260(~~(+12+)~~) (11).

7 (c) As part of the annual survey, the department may request
8 additional information, including the amount of investment in equipment
9 used in the activities taxable under the preferential rate in RCW
10 82.04.260(~~(+12+)~~) (11), necessary to measure the results of, or
11 determine eligibility for, the preferential tax rate in RCW
12 82.04.260(~~(+12+)~~) (11).

13 (d) All information collected under this section, except the amount
14 of the tax reduced under the preferential rate in RCW 82.04.260(~~(+12+)~~)
15 (11), is deemed taxpayer information under RCW 82.32.330. Information
16 on the amount of tax reduced is not subject to the confidentiality
17 provisions of RCW 82.32.330 and may be disclosed to the public upon
18 request, except as provided in (e) of this subsection. If the amount
19 of the tax reduced as reported on the survey is different than the
20 amount actually reduced based on the taxpayer's excise tax returns or
21 otherwise allowed by the department, the amount actually reduced may be
22 disclosed.

23 (e) Persons for whom the actual amount of the tax reduction is less
24 than ten thousand dollars during the period covered by the survey may
25 request the department to treat the amount of the tax reduction as
26 confidential under RCW 82.32.330.

27 (f) Small harvesters as defined in RCW 84.33.035 are not required
28 to file the annual survey under this section.

29 (3) If a person fails to submit a complete annual survey under
30 subsection (2) of this section by the due date or any extension under
31 RCW 82.32.590, the department shall declare the amount of taxes reduced
32 under the preferential rate in RCW 82.04.260(~~(+12+)~~) (11) for the
33 period covered by the survey to be immediately due and payable. The
34 department (~~shall~~) must assess interest, but not penalties, on the
35 taxes. Interest (~~shall~~) must be assessed at the rate provided for
36 delinquent excise taxes under this chapter, retroactively to the date
37 the reduced taxes were due, and (~~shall~~) will accrue until the amount
38 of the reduced taxes is repaid.

1 (4) The department (~~shall~~) must use the information from the
2 annual survey required under subsection (2) of this section to prepare
3 summary descriptive statistics by category. The department (~~shall~~)
4 must report these statistics to the legislature each year by September
5 1st. The requirement to prepare and report summary descriptive
6 statistics (~~shall~~) ceases after September 1, 2025.

7 (5) By November 1, 2011, and November 1, 2023, the fiscal
8 committees of the house of representatives and the senate, in
9 consultation with the department, (~~shall~~) must report to the
10 legislature on the effectiveness of the preferential tax rate provided
11 in RCW 82.04.260(~~(+12+)~~) (11). The report shall measure the effect of
12 the preferential tax rate provided in RCW 82.04.260(~~(+12+)~~) (11) on job
13 retention, net jobs created for Washington residents, company growth,
14 and other factors as the committees select. The report (~~shall~~) must
15 include a discussion of principles to apply in evaluating whether the
16 legislature should continue the preferential tax rate provided in RCW
17 82.04.260(~~(+12+)~~) (11).

18 **Sec. 416.** RCW 82.32.632 and 2009 c 461 s 6 are each amended to
19 read as follows:

20 (1)(a) Every person claiming the preferential rate provided in RCW
21 82.04.260(~~(+14+)~~) (13) must file a complete annual report with the
22 department. The report is due by March 31st of the year following any
23 calendar year in which a person is eligible to claim the preferential
24 rate provided in RCW 82.04.260(~~(+14+)~~) (13). The department may extend
25 the due date for timely filing of annual reports under this section as
26 provided in RCW 82.32.590.

27 (b) The report must include information detailing employment,
28 wages, and employer-provided health and retirement benefits for
29 employment positions in Washington for the year that the preferential
30 rate was claimed. The report must not include names of employees. The
31 report must also detail employment by the total number of full-time,
32 part-time, and temporary positions for the year that the tax preference
33 was claimed.

34 (c) If a person filing a report under this section did not file a
35 report with the department in the previous calendar year, the report
36 filed under this section must also include employment, wage, and

1 benefit information for the calendar year immediately preceding the
2 calendar year for which the preferential rate provided in RCW
3 82.04.260(~~((+14))~~) (13) was claimed.

4 (2) As part of the annual report, the department may request
5 additional information necessary to measure the results of, or
6 determine eligibility for, the preferential rate provided in RCW
7 82.04.260(~~((+14))~~) (13).

8 (3) Other than information requested under subsection (2) of this
9 section, the information contained in an annual report filed under this
10 section is not subject to the confidentiality provisions of RCW
11 82.32.330 and may be disclosed to the public upon request.

12 (4) Except as otherwise provided by law, if a person claims the
13 preferential rate provided in RCW 82.04.260(~~((+14))~~) (13) but fails to
14 submit a report by the due date or any extension under RCW 82.32.590,
15 the department must declare the amount of the tax preference claimed
16 for the previous calendar year to be immediately due and payable. The
17 department must assess interest, but not penalties, on the amounts due
18 under this subsection. The interest must be assessed at the rate
19 provided for delinquent taxes under this chapter, retroactively to the
20 date the tax preference was claimed, and accrues until the taxes for
21 which the tax preference was claimed are repaid. Amounts due under
22 this subsection are not subject to the confidentiality provisions of
23 RCW 82.32.330 and may be disclosed to the public upon request.

24 (5) By November 1, 2014, and November 1, 2016, the fiscal
25 committees of the house of representatives and the senate, in
26 consultation with the department, must report to the legislature on the
27 effectiveness of the preferential rate provided in RCW
28 82.04.260(~~((+14))~~) (13). The report must measure the effect of the
29 preferential rate provided in RCW 82.04.260(~~((+14))~~) (13) on job
30 retention, net jobs created for Washington residents, industry growth,
31 and other factors as the committees select. The report must include a
32 discussion of principles to apply in evaluating whether the legislature
33 should continue the preferential rate provided in RCW 82.04.260(~~((+14))~~)
34 (13).

35 **Sec. 417.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read
36 as follows:

1 A sale of standing timber is exempt from tax under this chapter if
2 the gross income from such sale is taxable under RCW 82.04.260(~~(+12+)~~)
3 (11)(d).

4 **Sec. 418.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to
5 read as follows:

6 Notwithstanding RCW 35.102.130, a city that imposes a business and
7 occupation tax must allocate a person's gross income from the
8 activities of printing, and of publishing newspapers, periodicals, or
9 magazines, to the principal place in this state from which the
10 taxpayer's business is directed or managed. As used in this section,
11 the activities of printing, and of publishing newspapers, periodicals,
12 or magazines are those activities to which the tax rates in RCW
13 82.04.260(~~(+14+)~~) (13) and 82.04.280(1) apply.

14 **Sec. 419.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
15 read as follows:

16 (1) As to insurers, other than title insurers and taxpayers under
17 RCW 48.14.0201, the taxes imposed by this title (~~(shall be)~~) are in
18 lieu of all other taxes, except as otherwise provided in this section.

19 (2) Subsection (1) of this section does not apply with respect to:

20 (a) Taxes on real and tangible personal property;

21 (b) Excise taxes on the sale, purchase, use, or possession of (i)
22 real property; (ii) tangible personal property; (iii) extended
23 warranties; (iv) services, including digital automated services as
24 defined in RCW 82.04.192; and (v) digital goods and digital codes as
25 those terms are defined in RCW 82.04.192; and

26 (c) The tax imposed in RCW 82.04.260(~~(+10+)~~) (9), regarding public
27 and nonprofit hospitals.

28 (3) For the purposes of this section, the term "taxes" includes
29 taxes imposed by the state or any county, city, town, municipal
30 corporation, quasi-municipal corporation, or other political
31 subdivision.

32 **PART V**
33 **Ending the Preferential Business and Occupation Tax Treatment Received**
34 **by Directors of Corporations**

1 NEW SECTION. **Sec. 501.** (1) The legislature recognizes that the
2 business and occupation tax applies to all activities engaged in with
3 the object of gain, benefit, or advantage to the taxpayer or to another
4 person or class, directly or indirectly, unless a specific exemption
5 applies.

6 (2) One of the major business and occupation tax exemptions is
7 provided in RCW 82.04.360 for income earned as an employee or servant
8 as distinguished from income earned as an independent contractor. The
9 legislature's intent in providing this exemption was to exempt employee
10 wages from the business and occupation tax but not to exempt income
11 earned as an independent contractor.

12 (3) The legislature finds that corporate directors are not
13 employees or servants of the corporation whose board they serve on and
14 therefore are not entitled to a business and occupation tax exemption
15 under RCW 82.04.360. The legislature further finds that there are no
16 business and occupation tax exemptions for compensation received for
17 serving as a member of a corporation's board of directors.

18 (4) The legislature also finds that there is a widespread
19 misunderstanding among corporate directors that the business and
20 occupation tax does not apply to the compensation they receive for
21 serving as a director of a corporation. It is the legislature's
22 expectation that the department of revenue will take appropriate
23 measures to ensure that corporate directors understand and comply with
24 their business and occupation tax obligations with respect to their
25 director compensation. However, because of the widespread
26 misunderstanding by corporate directors of their liability for business
27 and occupation tax on director compensation, the legislature finds that
28 it is appropriate in this unique situation to provide limited relief
29 against the retroactive assessment of business and occupation taxes on
30 corporate director compensation.

31 (5) The legislature also reaffirms its intent that all income of
32 all independent contractors is subject to business and occupation tax
33 unless specifically exempt under the Constitution or laws of this state
34 or the United States.

35 **Sec. 502.** RCW 82.04.360 and 1991 c 324 s 19 and 1991 c 275 s 2 are
36 each reenacted and amended to read as follows:

37 (1) This chapter (~~shall~~) does not apply to any person in respect

1 to his or her employment in the capacity of an employee or servant as
2 distinguished from that of an independent contractor. For the purposes
3 of this section, the definition of employee (~~shall~~) includes those
4 persons that are defined in section 3121(d)(3)(B) of the federal
5 internal revenue code of 1986, as amended through January 1, 1991.

6 (2) (~~(A booth renter, as defined by RCW 18.16.020, is an~~
7 ~~independent contractor for purposes of this chapter.)~~) Until July 1,
8 2010, this chapter does not apply to amounts received by an individual
9 from a corporation as compensation for serving as a member of that
10 corporation's board of directors. Beginning July 1, 2010, such amounts
11 are taxable under RCW 82.04.290(2).

12 NEW SECTION. Sec. 503. The sole reason for deleting the language
13 in RCW 82.04.360(2) is because RCW 18.16.020 no longer defines the term
14 "booth renter." This should not be construed as a substantive change
15 in the law.

16 PART VI

17 Foreclosure Exemption

18 **Sec. 601.** RCW 82.45.010 and 2010 c ... s 206 (section 206 of this
19 act) are each amended to read as follows:

20 (1) As used in this chapter, the term "sale" has its ordinary
21 meaning and includes any conveyance, grant, assignment, quitclaim, or
22 transfer of the ownership of or title to real property, including
23 standing timber, or any estate or interest therein for a valuable
24 consideration, and any contract for such conveyance, grant, assignment,
25 quitclaim, or transfer, and any lease with an option to purchase real
26 property, including standing timber, or any estate or interest therein
27 or other contract under which possession of the property is given to
28 the purchaser, or any other person at the purchaser's direction, and
29 title to the property is retained by the vendor as security for the
30 payment of the purchase price. The term also includes the grant,
31 assignment, quitclaim, sale, or transfer of improvements constructed
32 upon leased land.

33 (2)(a) The term "sale" also includes the transfer or acquisition
34 within any twelve-month period of a controlling interest in any entity

1 with an interest in real property located in this state for a valuable
2 consideration.

3 (b) For the sole purpose of determining whether, pursuant to the
4 exercise of an option, a controlling interest was transferred or
5 acquired within a twelve-month period, the date that the option
6 agreement was executed is the date on which the transfer or acquisition
7 of the controlling interest is deemed to occur. For all other purposes
8 under this chapter, the date upon which the option is exercised is the
9 date of the transfer or acquisition of the controlling interest.

10 (c) For purposes of this subsection, all acquisitions of persons
11 acting in concert must be aggregated for purposes of determining
12 whether a transfer or acquisition of a controlling interest has taken
13 place. The department must adopt standards by rule to determine when
14 persons are acting in concert. In adopting a rule for this purpose,
15 the department must consider the following:

16 (i) Persons must be treated as acting in concert when they have a
17 relationship with each other such that one person influences or
18 controls the actions of another through common ownership; and

19 (ii) When persons are not commonly owned or controlled, they must
20 be treated as acting in concert only when the unity with which the
21 purchasers have negotiated and will consummate the transfer of
22 ownership interests supports a finding that they are acting as a single
23 entity. If the acquisitions are completely independent, with each
24 purchaser buying without regard to the identity of the other
25 purchasers, then the acquisitions are considered separate acquisitions.

26 (3) The term "sale" does not include:

27 (a) A transfer by gift, devise, or inheritance.

28 (b) A transfer of any leasehold interest other than of the type
29 mentioned above.

30 (c) A cancellation or forfeiture of a vendee's interest in a
31 contract for the sale of real property, whether or not such contract
32 contains a forfeiture clause, or deed in lieu of foreclosure of a
33 mortgage.

34 (d) The partition of property by tenants in common by agreement or
35 as the result of a court decree.

36 (e) The assignment of property or interest in property from one
37 spouse or one domestic partner to the other spouse or other domestic

1 partner in accordance with the terms of a decree of dissolution of
2 marriage or state registered domestic partnership or in fulfillment of
3 a property settlement agreement.

4 (f) The assignment or other transfer of a vendor's interest in a
5 contract for the sale of real property, even though accompanied by a
6 conveyance of the vendor's interest in the real property involved.

7 (g) Transfers by appropriation or decree in condemnation
8 proceedings brought by the United States, the state or any political
9 subdivision thereof, or a municipal corporation.

10 (h) A mortgage or other transfer of an interest in real property
11 merely to secure a debt, or the assignment thereof.

12 (i) ~~((Any))~~ A transfer or conveyance made (i) to the beneficiary of
13 a deed of trust pursuant to a trustee's sale in the nonjudicial
14 foreclosure of a deed of trust ((or)); (ii) to the mortgagee,
15 beneficiary of the deed of trust, or lienholder pursuant to an order of
16 sale by the court in the judicial foreclosure of any mortgage, deed of
17 trust, or lien ((foreclosure proceeding or upon execution of a
18 judgment, or)); (iii) to the mortgagee by the mortgagor or to the
19 beneficiary of a deed of trust by the grantor pursuant to deed in lieu
20 of foreclosure to satisfy a mortgage or deed of trust; or (iv) to the
21 judgment creditor pursuant to a writ of execution to enforce a
22 judgment.

23 (j) A conveyance to the federal housing administration or veterans
24 administration by an authorized mortgagee made pursuant to a contract
25 of insurance or guaranty with the federal housing administration or
26 veterans administration.

27 (k) A transfer in compliance with the terms of any lease or
28 contract upon which the tax as imposed by this chapter has been paid or
29 where the lease or contract was entered into prior to the date this tax
30 was first imposed.

31 (l) The sale of any grave or lot in an established cemetery.

32 (m) A sale by the United States, this state or any political
33 subdivision thereof, or a municipal corporation of this state.

34 (n) A sale to a regional transit authority or public corporation
35 under RCW 81.112.320 under a sale/leaseback agreement under RCW
36 81.112.300.

37 (o) A transfer of real property, however effected, if it consists
38 of a mere change in identity or form of ownership of an entity where

1 there is no change in the beneficial ownership. These include
2 transfers to a corporation or partnership which is wholly owned by the
3 transferor and/or the transferor's spouse or domestic partner or
4 children of the transferor or the transferor's spouse or domestic
5 partner. However, if thereafter such transferee corporation or
6 partnership voluntarily transfers such real property, or such
7 transferor, spouse or domestic partner, or children of the transferor
8 or the transferor's spouse or domestic partner voluntarily transfer
9 stock in the transferee corporation or interest in the transferee
10 partnership capital, as the case may be, to other than (i) the
11 transferor and/or the transferor's spouse or domestic partner or
12 children of the transferor or the transferor's spouse or domestic
13 partner, (ii) a trust having the transferor and/or the transferor's
14 spouse or domestic partner or children of the transferor or the
15 transferor's spouse or domestic partner as the only beneficiaries at
16 the time of the transfer to the trust, or (iii) a corporation or
17 partnership wholly owned by the original transferor and/or the
18 transferor's spouse or domestic partner or children of the transferor
19 or the transferor's spouse or domestic partner, within three years of
20 the original transfer to which this exemption applies, and the tax on
21 the subsequent transfer has not been paid within sixty days of becoming
22 due, excise taxes become due and payable on the original transfer as
23 otherwise provided by law.

24 (p)(i) A transfer that for federal income tax purposes does not
25 involve the recognition of gain or loss for entity formation,
26 liquidation or dissolution, and reorganization, including but not
27 limited to nonrecognition of gain or loss because of application of 26
28 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
29 revenue code of 1986, as amended.

30 (ii) However, the transfer described in (p)(i) of this subsection
31 cannot be preceded or followed within a twelve-month period by another
32 transfer or series of transfers, that, when combined with the otherwise
33 exempt transfer or transfers described in (p)(i) of this subsection,
34 results in the transfer of a controlling interest in the entity for
35 valuable consideration, and in which one or more persons previously
36 holding a controlling interest in the entity receive cash or property
37 in exchange for any interest the person or persons acting in concert
38 hold in the entity. This subsection (3)(p)(ii) does not apply to that

1 part of the transfer involving property received that is the real
2 property interest that the person or persons originally contributed to
3 the entity or when one or more persons who did not contribute real
4 property or belong to the entity at a time when real property was
5 purchased receive cash or personal property in exchange for that person
6 or persons' interest in the entity. The real estate excise tax under
7 this subsection (3)(p)(ii) is imposed upon the person or persons who
8 previously held a controlling interest in the entity.

9 (q) A qualified sale of a manufactured/mobile home community, as
10 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
11 but before December 31, 2018.

12 **Sec. 602.** RCW 82.45.080 and 1980 c 154 s 3 are each amended to
13 read as follows:

14 (1) Except as otherwise provided in this chapter, the tax levied
15 under this chapter ((shall be)) is the obligation of the seller and the
16 department ((of revenue)) may, at the department's option, enforce the
17 obligation through an action of debt against the seller or the
18 department may proceed in the manner prescribed for the foreclosure of
19 mortgages ((and resort to)). The department's use of one course of
20 enforcement ((shall)) is not ((be)) an election not to pursue the
21 other.

22 (2) When a transfer or conveyance pursuant to a judicial or
23 nonjudicial foreclosure or enforcement of a judgment is a sale, and
24 notwithstanding any other provisions of law, the tax levied under this
25 chapter is the obligation of the buyer, and provisions of this chapter
26 applicable to the seller apply to the buyer. The department may
27 enforce the obligation against the buyer as provided in subsection (1)
28 of this section.

29 PART VII

30 Corporate Officer Liability

31 **Sec. 701.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
32 read as follows:

33 (1) ~~((Upon termination, dissolution, or abandonment of a corporate~~
34 ~~or limited liability company business, any officer, member, manager, or~~
35 ~~other person having control or supervision of retail sales tax funds~~

1 collected and held in trust under RCW 82.08.050, or who is charged with
2 the responsibility for the filing of returns or the payment of retail
3 sales tax funds collected and held in trust under RCW 82.08.050, shall
4 be personally liable for any unpaid taxes and interest and penalties on
5 those taxes, if such officer or other person wilfully fails to pay or
6 to cause to be paid any taxes due from the corporation pursuant to
7 chapter 82.08 RCW. For the purposes of this section, any retail sales
8 taxes that have been paid but not collected shall be deductible from
9 the retail sales taxes collected but not paid.

10 For purposes of this subsection "wilfully fails to pay or to cause
11 to be paid" means that the failure was the result of an intentional,
12 conscious, and voluntary course of action.

13 (2) ~~The officer, member or manager, or other person shall be liable~~
14 ~~only for taxes collected which~~) Whenever the department has issued a
15 warrant under RCW 82.32.210 for the collection of unpaid taxes from a
16 limited liability business entity and that business entity has been
17 terminated, dissolved, or abandoned, or is insolvent, the department
18 may pursue collection of the entity's unpaid taxes, including penalties
19 and interest on those taxes, against any or all of the responsible
20 individuals. For purposes of this subsection, "insolvent" means the
21 condition that results when the sum of the entity's debts exceeds the
22 fair market value of its assets. The department may presume that an
23 entity is insolvent if the entity refuses to disclose to the department
24 the nature of its assets and liabilities.

25 (2) Personal liability under this section may be imposed for state
26 and local sales and use taxes, state business and occupation taxes, and
27 any other state and local taxes collected by the department in respect
28 to which the provisions of this chapter apply, regardless of whether
29 the tax is denominated a tax, fee, charge, or some other term.

30 (3)(a) For a responsible individual who is the current or a former
31 chief executive or chief financial officer, liability under this
32 section applies regardless of fault or whether the individual was or
33 should have been aware of the unpaid tax liability of the limited
34 liability business entity.

35 (b) For any other responsible individual, liability under this
36 section applies only if he or she willfully fails to pay or to cause to
37 be paid to the department the taxes due from the limited liability
38 business entity.

1 (4)(a) Except as provided in this subsection (4)(a), a responsible
2 individual who is the current or a former chief executive or chief
3 financial officer is liable under this section only for tax liability
4 accrued during the period that he or she was the chief executive or
5 chief financial officer. However, if the responsible individual had
6 the responsibility or duty to remit payment of the limited liability
7 business entity's taxes to the department during any period of time
8 that the person was not the chief executive or chief financial officer,
9 that individual is also liable for tax liability that became due during
10 the period that he or she had the duty to remit payment of the limited
11 liability business entity's taxes to the department but was not the
12 chief executive or chief financial officer.

13 (b) All other responsible individuals are liable under this section
14 only for tax liability that became due during the period he or she had
15 the ((control, supervision,)) responsibility((,)) or duty to ((act for
16 the corporation described in subsection (1) of this section, plus
17 interest and penalties on those taxes.

18 (3)) remit payment of the limited liability business entity's
19 taxes to the department.

20 (5) Persons ((liable under)) described in subsection ((+1)) (3)(b)
21 of this section are exempt from liability under this section in
22 situations where nonpayment of the ((retail sales tax funds held in
23 trust)) limited liability business entity's taxes is due to reasons
24 beyond their control as determined by the department by rule.

25 ((+4)) (6) Any person having been issued a notice of assessment
26 under this section is entitled to the appeal procedures under RCW
27 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

28 ((+5) This section applies only in situations where the department
29 has determined that there is no reasonable means of collecting the
30 retail sales tax funds held in trust directly from the corporation.

31 (+6)) (7) This section does not relieve the ((corporation or))
32 limited liability ((company)) business entity of ((other tax
33 liabilities)) its tax liability or otherwise impair other tax
34 collection remedies afforded by law.

35 ((+7)) (8) Collection authority and procedures prescribed in this
36 chapter apply to collections under this section.

37 (9) The definitions in this subsection apply throughout this
38 section unless the context clearly requires otherwise.

1 (a) "Chief executive" means: The president of a corporation; or
2 for other entities or organizations other than corporations or if the
3 corporation does not have a president as one of its officers, the
4 highest ranking executive manager or administrator in charge of the
5 management of the company or organization.

6 (b) "Chief financial officer" means: The treasurer of a
7 corporation; or for entities or organizations other than corporations
8 or if a corporation does not have a treasurer as one of its officers,
9 the highest senior manager who is responsible for overseeing the
10 financial activities of the entire company or organization.

11 (c) "Limited liability business entity" means a type of business
12 entity that generally shields its owners from personal liability for
13 the debts, obligations, and liabilities of the entity, or a business
14 entity that is managed or owned in whole or in part by an entity that
15 generally shields its owners from personal liability for the debts,
16 obligations, and liabilities of the entity. Limited liability business
17 entities include corporations, limited liability companies, limited
18 liability partnerships, trusts, general partnerships and joint ventures
19 in which one or more of the partners or parties are also limited
20 liability business entities, and limited partnerships in which one or
21 more of the general partners are also limited liability business
22 entities.

23 (d) "Manager" has the same meaning as in RCW 25.15.005.

24 (e) "Member" has the same meaning as in RCW 25.15.005, except that
25 the term only includes members of member-managed limited liability
26 companies.

27 (f) "Officer" means any officer or assistant officer of a
28 corporation, including the president, vice-president, secretary, and
29 treasurer.

30 (g)(i) "Responsible individual" includes any current or former
31 officer, manager, member, partner, or trustee of a limited liability
32 business entity with an unpaid tax warrant issued by the department.

33 (ii) "Responsible individual" also includes any current or former
34 employee or other individual, but only if the individual had the
35 responsibility or duty to remit payment of the limited liability
36 business entity's unpaid tax liability reflected in a tax warrant
37 issued by the department.

1 (iii) Whenever any taxpayer has one or more limited liability
2 business entities as a member, manager, or partner, "responsible
3 individual" also includes any current and former officers, members, or
4 managers of the limited liability business entity or entities or of any
5 other limited liability business entity involved directly in the
6 management of the taxpayer. For purposes of this subsection
7 (9)(g)(iii), "taxpayer" means a limited liability business entity with
8 an unpaid tax warrant issued against it by the department.

9 (h) "Willfully fails to pay or to cause to be paid" means that the
10 failure was the result of an intentional, conscious, and voluntary
11 course of action.

12 PART VIII

13 Repealing the Business and Occupation Tax Credit for New Employment for 14 International Service Activities

15 NEW SECTION. Sec. 801. RCW 82.04.44525 (Credit--New employment
16 for international service activities in eligible areas--Designation of
17 census tracts for eligibility--Records--Tax due upon ineligibility--
18 Interest assessment--Information from employment security department)
19 and 2009 c 535 s 1104, 2008 c 81 s 9, & 1998 c 313 s 2 are each
20 repealed.

21 PART IX

22 Rural County Tax Incentives

23 **Sec. 901.** RCW 82.60.020 and 2006 c 142 s 1 are each amended to
24 read as follows:

25 Unless the context clearly requires otherwise, the definitions in
26 this section apply throughout this chapter.

27 (1) "Applicant" means a person applying for a tax deferral under
28 this chapter.

29 (2) "Department" means the department of revenue.

30 (3) "Eligible area" means a rural county as defined in RCW
31 82.14.370.

32 (4)(a) "Eligible investment project" means an investment project in
33 an eligible area as defined in subsection (3) of this section.

1 (b) The lessor or owner of a qualified building is not eligible for
2 a deferral unless:

3 (i) The underlying ownership of the buildings, machinery, and
4 equipment vests exclusively in the same person; or

5 (ii)(A) The lessor by written contract agrees to pass the economic
6 benefit of the deferral to the lessee;

7 (B) The lessee that receives the economic benefit of the deferral
8 agrees in writing with the department to complete the annual survey
9 required under RCW 82.60.070; and

10 (C) The economic benefit of the deferral passed to the lessee is no
11 less than the amount of tax deferred by the lessor and is evidenced by
12 written documentation of any type of payment, credit, or other
13 financial arrangement between the lessor or owner of the qualified
14 building and the lessee.

15 (c) "Eligible investment project" does not include any portion of
16 an investment project undertaken by a light and power business as
17 defined in RCW 82.16.010(~~(+5))~~(4), other than that portion of a
18 cogeneration project that is used to generate power for consumption
19 within the manufacturing site of which the cogeneration project is an
20 integral part, or investment projects (~~(which)~~) that have already
21 received deferrals under this chapter.

22 (5) "Investment project" means an investment in qualified buildings
23 or qualified machinery and equipment, including labor and services
24 rendered in the planning, installation, and construction of the
25 project.

26 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
27 "Manufacturing" also includes:

28 (a) Before July 1, 2010: (i) Computer programming, the production
29 of computer software, and other computer-related services, but only
30 when the computer programming, production of computer software, or
31 other computer-related services are performed by a manufacturer as
32 defined in RCW 82.04.110 and contribute to the production of a new,
33 different, or useful substance or article of tangible personal property
34 for sale; (ii) the activities performed by research and development
35 laboratories and commercial testing laboratories(~~(7))~~; and (iii) the
36 conditioning of vegetable seeds; and

37 (b) Beginning July 1, 2010: (i) The activities performed by

1 research and development laboratories and commercial testing
2 laboratories; and (ii) the conditioning of vegetable seeds.

3 (7) "Person" has the meaning given in RCW 82.04.030.

4 (8) "Qualified buildings" means construction of new structures, and
5 expansion or renovation of existing structures for the purpose of
6 increasing floor space or production capacity used for manufacturing
7 (~~and~~) or research and development activities, including plant offices
8 and warehouses or other facilities for the storage of raw material or
9 finished goods if such facilities are an essential or an integral part
10 of a factory, mill, plant, or laboratory used for manufacturing or
11 research and development. If a building is used partly for
12 manufacturing or research and development and partly for other
13 purposes, the applicable tax deferral shall be determined by
14 apportionment of the costs of construction under rules adopted by the
15 department.

16 (9) "Qualified employment position" means a permanent full-time
17 employee employed in the eligible investment project during the entire
18 tax year. The term "entire tax year" means a full-time position that
19 is filled for a period of twelve consecutive months. The term "full-
20 time" means at least thirty-five hours a week, four hundred fifty-five
21 hours a quarter, or one thousand eight hundred twenty hours a year.

22 (10) "Qualified machinery and equipment" means all new industrial
23 and research fixtures, equipment, and support facilities that are an
24 integral and necessary part of a manufacturing or research and
25 development operation. "Qualified machinery and equipment" includes:
26 Computers; software; data processing equipment; laboratory equipment;
27 manufacturing components such as belts, pulleys, shafts, and moving
28 parts; molds, tools, and dies; operating structures; and all equipment
29 used to control or operate the machinery.

30 (11) "Recipient" means a person receiving a tax deferral under this
31 chapter.

32 (12) "Research and development" means the development, refinement,
33 testing, marketing, and commercialization of a product, service, or
34 process before commercial sales have begun, but only when such
35 activities are intended to ultimately result in the production of a
36 new, different, or useful substance or article of tangible personal
37 property for sale. As used in this subsection, "commercial sales"

1 excludes sales of prototypes or sales for market testing if the total
2 gross receipts from such sales of the product, service, or process do
3 not exceed one million dollars.

4 **Sec. 902.** RCW 82.62.010 and 2007 c 485 s 1 are each amended to
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in
7 this section apply throughout this chapter.

8 (1) "Applicant" means a person applying for a tax credit under this
9 chapter.

10 (2) "Department" means the department of revenue.

11 (3) "Eligible area" means an area as defined in RCW 82.60.020.

12 (4)(a) "Eligible business project" means manufacturing or research
13 and development activities which are conducted by an applicant in an
14 eligible area at a specific facility, provided the applicant's average
15 qualified employment positions at the specific facility will be at
16 least fifteen percent greater in the four consecutive full calendar
17 quarters after the calendar quarter during which the first qualified
18 employment position is filled than the applicant's average qualified
19 employment positions at the same facility in the four consecutive full
20 calendar quarters immediately preceding the calendar quarter during
21 which the first qualified employment position is filled.

22 (b) "Eligible business project" does not include any portion of a
23 business project undertaken by a light and power business as defined in
24 RCW 82.16.010(~~(+5)~~)(4) or that portion of a business project creating
25 qualified full-time employment positions outside an eligible area.

26 (5) "First qualified employment position" means the first qualified
27 employment position filled for which a credit under this chapter is
28 sought.

29 (6) "Manufacturing" means the same as defined in RCW 82.04.120.
30 "Manufacturing" also includes:

31 (a) Before July 1, 2010: (i) Computer programming, the production
32 of computer software, and other computer-related services, but only
33 when the computer programming, production of computer software, or
34 other computer-related services are performed by a manufacturer as
35 defined in RCW 82.04.110 and contribute to the production of a new,
36 different, or useful substance or article of tangible personal property

1 for sale; and (ii) the activities performed by research and development
2 laboratories and commercial testing laboratories; and

3 (b) Beginning July 1, 2010: (i) The activities performed by
4 research and development laboratories and commercial testing
5 laboratories; and (ii) the conditioning of vegetable seeds.

6 (7) "Person" has the meaning given in RCW 82.04.030.

7 (8)(a)(i) "Qualified employment position" means a permanent full-
8 time employee employed in the eligible business project during four
9 consecutive full calendar quarters.

10 (ii) For seasonal employers, "qualified employment position" also
11 includes the equivalent of a full-time employee in work hours for four
12 consecutive full calendar quarters.

13 (b) For purposes of this subsection, "full time" means a normal
14 work week of at least thirty-five hours.

15 (c) Once a permanent, full-time employee has been employed, a
16 position does not cease to be a qualified employment position solely
17 due to periods in which the position goes vacant, as long as:

18 (i) The cumulative period of any vacancies in that position is not
19 more than one hundred twenty days in the four-quarter period; and

20 (ii) During a vacancy, the employer is training or actively
21 recruiting a replacement permanent, full-time employee for the
22 position.

23 (9) "Recipient" means a person receiving tax credits under this
24 chapter.

25 (10) "Research and development" means the development, refinement,
26 testing, marketing, and commercialization of a product, service, or
27 process before commercial sales have begun, but only when such
28 activities are intended to ultimately result in the production of a
29 new, different, or useful substance or article of tangible personal
30 property for sale. As used in this subsection, "commercial sales"
31 excludes sales of prototypes or sales for market testing if the total
32 gross receipts from such sales of the product, service, or process do
33 not exceed one million dollars.

34 (11) "Seasonal employee" means an employee of a seasonal employer
35 who works on a seasonal basis. For the purposes of this subsection and
36 subsection (12) of this section, "seasonal basis" means a continuous
37 employment period of less than twelve consecutive months.

1 (12) "Seasonal employer" means a person who regularly hires more
2 than fifty percent of its employees to work on a seasonal basis.

3 **PART X**

4 **Deductions, Fees, Dues, and Charges**

5 **Sec. 1001.** RCW 82.04.4282 and 2009 c 535 s 410 are each amended to
6 read as follows:

7 In computing tax there may be deducted from the measure of tax
8 amounts derived from bona fide (1) dues and initiation fees paid to
9 nonprofit organizations exempt from the federal income tax under 26
10 U.S.C. Sec. 501(c)(3), (c)(4), (c)(5), (c)(6), (c)(8), (c)(10), or
11 (c)(19) of the federal internal revenue code, as amended as of January
12 1, 2010, (2) (~~dues, (3)~~) contributions, (~~(4)~~) (3) donations,
13 (~~(5)~~) (4) tuition fees, (~~(6)~~) (5) charges made by a nonprofit trade
14 or professional organization for attending or occupying space at a
15 trade show, convention, or educational seminar sponsored by the
16 nonprofit trade or professional organization, which trade show,
17 convention, or educational seminar is not open to the general public,
18 (~~(7)~~) (6) charges made for operation of privately operated
19 kindergartens, and (~~(8)~~) (7) endowment funds. This section may not
20 be construed to exempt any person, association, or society from tax
21 liability upon selling tangible personal property, digital goods,
22 digital codes, or digital automated services, or upon providing
23 facilities or other services for which a special charge is made to
24 members or others. If dues are in exchange for any significant amount
25 of goods or services rendered by the recipient thereof to members
26 without any additional charge to the member, or if the dues are
27 graduated upon the amount of goods or services rendered, the value of
28 such goods or services (~~shall~~) may not be considered as a deduction
29 under this section.

30 "Bona fide dues and initiation fees" means those amounts paid to
31 join or continue membership in an organization solely for the right to
32 associate with other members. Amounts paid to receive goods or
33 services in the future do not constitute bona fide dues or initiation
34 fees.

1 PART XI

2 Limiting the Bad Debt Deduction

3 NEW SECTION. **Sec. 1101.** The legislature intends with sections
4 1102 and 1103 of this act to supersede the holding of the supreme court
5 of the state of Washington in *Puget Sound National Bank v. Department*
6 *of Revenue*, 123 Wn.2d 284 (1994).

7 **Sec. 1102.** RCW 82.08.037 and 2007 c 6 s 102 are each amended to
8 read as follows:

9 (1) A seller is entitled to a credit or refund for sales taxes
10 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
11 166, as amended or renumbered as of January 1, 2003.

12 (2) For purposes of this section, "bad debts" does not include:

13 (a) Amounts due on property that remains in the possession of the
14 seller until the full purchase price is paid;

15 (b) Expenses incurred in attempting to collect debt; (~~and~~)

16 (c) Debts sold or assigned by the seller to third parties, where
17 the third party is without recourse against the seller; and

18 (d) Repossessed property.

19 (3) If a credit or refund of sales tax is taken for a bad debt and
20 the debt is subsequently collected in whole or in part, the tax on the
21 amount collected must be paid and reported on the return filed for the
22 period in which the collection is made.

23 (4) Payments on a previously claimed bad debt are applied first
24 proportionally to the taxable price of the property or service and the
25 sales or use tax thereon, and secondly to interest, service charges,
26 and any other charges.

27 (5) If the seller uses a certified service provider as defined in
28 RCW 82.32.020 to administer its sales tax responsibilities, the
29 certified service provider may claim, on behalf of the seller, the
30 credit or refund allowed by this section. The certified service
31 provider must credit or refund the full amount received to the seller.

32 (6) The department (~~shall~~) must allow an allocation of bad debts
33 among member states to the streamlined sales tax agreement, as defined
34 in RCW 82.58.010(1), if the books and records of the person claiming
35 bad debts support the allocation.

36 (7) A person's right to claim a credit or refund under this section
37 is not assignable. No person other than the original seller in the

1 transaction that generated the bad debt or, as provided in subsection
2 (5) of this section, a certified service provider, is entitled to claim
3 a credit or refund under this section. If the original seller in the
4 transaction that generated the bad debt has sold or assigned the debt
5 instrument to a third party with recourse, the original seller may
6 claim a credit or refund under this section only after the debt
7 instrument is reassigned by the third party to the original seller.

8 **Sec. 1103.** RCW 82.12.037 and 2007 c 6 s 103 are each amended to
9 read as follows:

10 (1) A seller is entitled to a credit or refund for use taxes
11 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
12 166, as amended or renumbered as of January 1, 2003.

13 (2) For purposes of this section, "bad debts" does not include:

14 (a) Amounts due on property that remains in the possession of the
15 seller until the full purchase price is paid;

16 (b) Expenses incurred in attempting to collect debt; (~~and~~)

17 (c) Debts sold or assigned by the seller to third parties, where
18 the third party is without recourse against the seller; and

19 (d) Repossessed property.

20 (3) If a credit or refund of use tax is taken for a bad debt and
21 the debt is subsequently collected in whole or in part, the tax on the
22 amount collected must be paid and reported on the return filed for the
23 period in which the collection is made.

24 (4) Payments on a previously claimed bad debt are applied first
25 proportionally to the taxable price of the property or service and the
26 sales or use tax thereon, and secondly to interest, service charges,
27 and any other charges.

28 (5) If the seller uses a certified service provider as defined in
29 RCW 82.32.020 to administer its use tax responsibilities, the certified
30 service provider may claim, on behalf of the seller, the credit or
31 refund allowed by this section. The certified service provider must
32 credit or refund the full amount received to the seller.

33 (6) The department (~~shall~~) must allow an allocation of bad debts
34 among member states to the streamlined sales and use tax agreement, as
35 defined in RCW 82.58.010(1), if the books and records of the person
36 claiming bad debts support the allocation.

1 (7) A person's right to claim a credit or refund under this section
2 is not assignable. No person other than the original seller in the
3 transaction that generated the bad debt or, as provided in subsection
4 (5) of this section, a certified service provider, is entitled to claim
5 a credit or refund under this section. If the original seller in the
6 transaction that generated the bad debt has sold or assigned the debt
7 instrument to a third party with recourse, the original seller may
8 claim a credit or refund under this section only after the debt
9 instrument is reassigned by the third party to the original seller.

10 **PART XII**

11 **Limiting Community Solar Incentives**

12 **Sec. 1201.** RCW 82.16.110 and 2009 c 469 s 504 are each amended to
13 read as follows:

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

16 (1)(a) "Community solar project" means:

17 (i) A solar energy system that is capable of generating up to
18 seventy-five kilowatts of electricity and is owned by local
19 individuals, households, nonprofit organizations, or nonutility
20 businesses that is placed on the property owned by a cooperating local
21 governmental entity that is not in the light and power business or in
22 the gas distribution business; or

23 (ii) A utility-owned solar energy system that is capable of
24 generating up to seventy-five kilowatts of electricity and that is
25 voluntarily funded by the utility's ratepayers where, in exchange for
26 their financial support, the utility gives contributors a payment or
27 credit on their utility bill for the value of the electricity produced
28 by the project.

29 (b) For the purposes of "community solar project" as defined in (a)
30 of this subsection:

31 (i) "Nonprofit organization" means an organization exempt from
32 taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal
33 revenue code of 1986, as amended, as of January 1, 2009; and

34 (ii) "Utility" means a light and power business, an electric
35 cooperative, or a mutual corporation that provides electricity service.

1 (2) "Customer-generated electricity" means a community solar
2 project or the alternating current electricity that is generated from
3 a renewable energy system located in Washington and installed on an
4 individual's, businesses', or local government's real property that is
5 also provided electricity generated by a light and power business.
6 Except for community solar projects, a system located on a leasehold
7 interest does not qualify under this definition. Except for utility-
8 owned community solar projects, "customer-generated electricity" does
9 not include electricity generated by a light and power business with
10 greater than one thousand megawatt hours of annual sales or a gas
11 distribution business.

12 (3) "Economic development kilowatt-hour" means the actual kilowatt-
13 hour measurement of customer-generated electricity multiplied by the
14 appropriate economic development factor.

15 (4) "Local governmental entity" means any unit of local government
16 of this state including, but not limited to, counties, cities, towns,
17 municipal corporations, quasi-municipal corporations, special purpose
18 districts, and school districts.

19 (5) "Photovoltaic cell" means a device that converts light directly
20 into electricity without moving parts.

21 (6) "Renewable energy system" means a solar energy system, an
22 anaerobic digester as defined in RCW 82.08.900, or a wind generator
23 used for producing electricity.

24 (7) "Solar energy system" means any device or combination of
25 devices or elements that rely upon direct sunlight as an energy source
26 for use in the generation of electricity.

27 (8) "Solar inverter" means the device used to convert direct
28 current to alternating current in a photovoltaic cell system.

29 (9) "Solar module" means the smallest nondivisible self-contained
30 physical structure housing interconnected photovoltaic cells and
31 providing a single direct current electrical output.

32 **PART XIII**
33 **Livestock Nutrients**

34 **Sec. 1301.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to
35 read as follows:

1 (1) Except for sales made between July 1, 2010, and June 30, 2013,
2 the tax levied by RCW 82.08.020 does not apply to sales to eligible
3 persons of:

4 (a) Qualifying livestock nutrient management equipment;

5 (b) Labor and services rendered in respect to installing,
6 repairing, cleaning, altering, or improving qualifying livestock
7 nutrient management equipment; and

8 (c)(i) Labor and services rendered in respect to repairing,
9 cleaning, altering, or improving of qualifying livestock nutrient
10 management facilities, or to tangible personal property that becomes an
11 ingredient or component of qualifying livestock nutrient management
12 facilities in the course of repairing, cleaning, altering, or improving
13 of such facilities.

14 (ii) The exemption provided in this subsection (1)(c) does not
15 apply to the sale of or charge made for: (A) Labor and services
16 rendered in respect to the constructing of new, or replacing previously
17 existing, qualifying livestock nutrient management facilities; or (B)
18 tangible personal property that becomes an ingredient or component of
19 qualifying livestock nutrient management facilities during the course
20 of constructing new, or replacing previously existing, qualifying
21 livestock nutrient management facilities.

22 (2) The exemption provided in subsection (1) of this section
23 applies to sales made after the livestock nutrient management plan is:
24 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
25 permit issued under chapter 90.48 RCW; or (c) approved as required
26 under subsection (4)(c)(iii) of this section.

27 (3)(a) The department of revenue must provide an exemption
28 certificate to an eligible person upon application by that person. The
29 department of agriculture must provide a list of eligible persons, as
30 defined in subsection (4)(c)(i) and (ii) of this section, to the
31 department of revenue. Conservation districts must maintain lists of
32 eligible persons as defined in subsection (4)(c)(iii) of this section
33 to allow the department of revenue to verify eligibility. The
34 application must be in a form and manner prescribed by the department
35 and must contain information regarding the location of the dairy or
36 animal feeding operation and other information the department may
37 require.

1 (b) A person claiming an exemption under this section must keep
2 records necessary for the department to verify eligibility under this
3 section. The exemption is available only when the buyer provides the
4 seller with an exemption certificate in a form and manner prescribed by
5 the department. The seller must retain a copy of the certificate for
6 the seller's files.

7 (4) The definitions in this subsection apply to this section and
8 RCW 82.12.890 unless the context clearly requires otherwise:

9 (a) "Animal feeding operation" means a lot or facility, other than
10 an aquatic animal production facility, where the following conditions
11 are met:

12 (i) Animals, other than aquatic animals, have been, are, or will be
13 stabled or confined and fed or maintained for a total of forty-five
14 days or more in any twelve-month period; and

15 (ii) Crops, vegetation, forage growth, or postharvest residues are
16 not sustained in the normal growing season over any portion of the lot
17 or facility.

18 (b) "Conservation district" means a subdivision of state government
19 organized under chapter 89.08 RCW.

20 (c) "Eligible person" means a person: (i) Licensed to produce milk
21 under chapter 15.36 RCW who has a certified dairy nutrient management
22 plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding
23 operation and has a permit issued under chapter 90.48 RCW; or (iii) who
24 owns an animal feeding operation and has a nutrient management plan
25 approved by a conservation district as meeting natural resource
26 conservation service field office technical guide standards and who
27 possesses an exemption certificate under RCW 82.08.855.

28 (d) "Handling and treatment of livestock manure" means the
29 activities of collecting, storing, moving, or transporting livestock
30 manure, separating livestock manure solids from liquids, or applying
31 livestock manure to the agricultural lands of an eligible person other
32 than through the use of pivot or linear type traveling irrigation
33 systems.

34 (e) "Permit" means either a state waste discharge permit or a
35 national pollutant discharge elimination system permit, or both.

36 (f) "Qualifying livestock nutrient management equipment" means the
37 following tangible personal property for exclusive use in the handling
38 and treatment of livestock manure, including repair and replacement

1 parts for such equipment: (i) Aerators; (ii) agitators; (iii) augers;
2 (iv) conveyers; (v) gutter cleaners; (vi) hard-hose reel traveler
3 irrigation systems; (vii) lagoon and pond liners and floating covers;
4 (viii) loaders; (ix) manure composting devices; (x) manure spreaders;
5 (xi) manure tank wagons; (xii) manure vacuum tanks; (xiii) poultry
6 house cleaners; (xiv) poultry house flame sterilizers; (xv) poultry
7 house washers; (xvi) poultry litter saver machines; (xvii) pipes;
8 (xviii) pumps; (xix) scrapers; (xx) separators; (xxi) slurry injectors
9 and hoses; and (xxii) wheelbarrows, shovels, and pitchforks.

10 (g) "Qualifying livestock nutrient management facilities" means the
11 following structures and facilities for exclusive use in the handling
12 and treatment of livestock manure: (i) Flush systems; (ii) lagoons;
13 (iii) liquid livestock manure storage structures, such as concrete
14 tanks or glass-lined steel tanks; and (iv) structures used solely for
15 the dry storage of manure, including roofed stacking facilities.

16 **Sec. 1302.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to
17 read as follows:

18 (1) The provisions of this chapter do not apply with respect to the
19 use by an eligible person of:

20 (a) Qualifying livestock nutrient management equipment;

21 (b) Labor and services rendered in respect to installing,
22 repairing, cleaning, altering, or improving qualifying livestock
23 nutrient management equipment; and

24 (c)(i) Tangible personal property that becomes an ingredient or
25 component of qualifying livestock nutrient management facilities in the
26 course of repairing, cleaning, altering, or improving of such
27 facilities.

28 (ii) The exemption provided in this subsection (1)(c) does not
29 apply to the use of tangible personal property that becomes an
30 ingredient or component of qualifying livestock nutrient management
31 facilities during the course of constructing new, or replacing
32 previously existing, qualifying livestock nutrient management
33 facilities.

34 (2)(a) To be eligible, the equipment and facilities must be used
35 exclusively for activities necessary to maintain a livestock nutrient
36 management plan.

1 (b) The exemption applies to the use of tangible personal property
2 and labor and services made after the livestock nutrient management
3 plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part
4 of the permit issued under chapter 90.48 RCW; or (iii) approved as
5 required under RCW 82.08.890(4)(c)(iii).

6 (3) The exemption certificate and recordkeeping requirements of RCW
7 82.08.890 apply to this section. The definitions in RCW 82.08.890
8 apply to this section.

9 (4) The exemption provided in this section does not apply to the
10 use of tangible personal property and services described in subsection
11 (1)(a), (b), and (c)(i) of this section if first use of the property or
12 services occurs in this state between July 1, 2010, and June 30, 2013.

13 PART XIV

14 PUD Privilege Tax Clarification

15 **Sec. 1401.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
16 read as follows:

17 "Gross revenue" (~~shall~~) means the amount received from the sale
18 of electric energy, which also includes any regularly recurring charge
19 billed to consumers as a condition of receiving electric energy, and
20 excluding any tax levied by a municipal corporation upon the district
21 pursuant to RCW 54.28.070.

22 PART XV

23 Repealing the Sales Tax Exemption for Coal Used at Coal-Fired Thermal 24 Electric Generation Facilities

25 NEW SECTION. **Sec. 1501.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 82.08.811 (Exemptions--Coal used at coal-fired thermal
28 electric generation facility--Application--Demonstration of progress in
29 air pollution control--Notice of emissions violations--Reapplication--
30 Payments on cessation of operation) and 1997 c 368 s 4; and

31 (2) RCW 82.12.811 (Exemptions--Coal used at coal-fired thermal
32 electric generation facility--Application--Demonstration of progress in
33 air pollution control--Notice of emissions violations--Reapplication--
34 Payments on cessation of operation) and 1997 c 368 s 6.

1 PART XVI

2 Sales and Use Tax Exemptions for Machinery
3 and Equipment Used in Renewable Energy Generation

4 Sec. 1601. RCW 82.08.962 and 2009 c 469 s 101 are each amended to
5 read as follows:

6 (1)(a) Except as provided in RCW 82.08.963, purchasers who have
7 paid the tax imposed by RCW 82.08.020 on machinery and equipment used
8 directly in generating electricity using fuel cells, wind, sun, biomass
9 energy, tidal or wave energy, geothermal resources, anaerobic
10 digestion, technology that converts otherwise lost energy from exhaust,
11 or landfill gas as the principal source of power, or to sales of or
12 charges made for labor and services rendered in respect to installing
13 such machinery and equipment, are eligible for an exemption as provided
14 in this section, but only if the purchaser develops with such
15 machinery, equipment, and labor a facility capable of generating not
16 less than one thousand watts of electricity.

17 (b) Except for energy generated by wind, beginning on July 1, 2009,
18 through June 30, 2011, the tax levied by RCW 82.08.020 does not apply
19 to the sale of machinery and equipment described in (a) of this
20 subsection that are used directly in generating electricity or to sales
21 of or charges made for labor and services rendered in respect to
22 installing such machinery and equipment.

23 (c)(i) For energy generated by wind, except as provided otherwise
24 in (ii) of this subsection (c), beginning on July 1, 2010, through June
25 30, 2011, the tax levied by RCW 82.08.020 does not apply to the sale to
26 a local electric utility, or to a person contracting with a local
27 electric utility for the sale of electric power generated by a facility
28 containing such machinery and equipment, of machinery and equipment
29 described in (a) of this subsection that are used directly in
30 generating electricity or to sales of or charges made for labor and
31 services rendered in respect to installing such machinery and
32 equipment.

33 (ii) Notwithstanding the limitations set forth in (i) of this
34 subsection (1)(c), and regardless of the identity of the purchaser, any
35 project using wind to generate electricity may receive the exemption
36 from sales tax provided under this subsection (1)(c) if construction of
37 the project began by December 31, 2010.

1 (d) Except for energy generated by wind, beginning on July 1, 2011,
2 through June 30, 2013, the amount of the exemption under this
3 subsection (1) is equal to seventy-five percent of the state and local
4 sales tax paid. The purchaser is eligible for an exemption under this
5 subsection (1)(d) in the form of a remittance.

6 (e)(i) For energy generated by wind, except as provided otherwise
7 in (ii) of this subsection (e), beginning on July 1, 2011, through June
8 30, 2013, the amount of the exemption under this subsection (1) is
9 equal to seventy-five percent of the state and local sales tax paid by
10 a local electric utility for such machinery and equipment, or to a
11 person contracting with a local electric utility for the sale of
12 electric power generated by a facility containing such machinery and
13 equipment. The purchaser is eligible for an exemption under this
14 subsection (1)((+e)) (e) in the form of a remittance.

15 (ii) Notwithstanding the limitations set forth in (i) of this
16 subsection (1)(e), and regardless of the identity of the purchaser, any
17 project using wind to generate electricity may receive the exemption
18 from sales tax provided under this subsection (1)(e) if construction of
19 the project began by December 31, 2010.

20 (2) For purposes of this section and RCW 82.12.962, the following
21 definitions apply:

22 (a) "Biomass energy" includes: (i) By-products of pulping and wood
23 manufacturing process; (ii) animal waste; (iii) solid organic fuels
24 from wood; (iv) forest or field residues; (v) wooden demolition or
25 construction debris; (vi) food waste; (vii) liquors derived from algae
26 and other sources; (viii) dedicated energy crops; (ix) biosolids; and
27 (x) yard waste. "Biomass energy" does not include wood pieces that
28 have been treated with chemical preservatives such as creosote,
29 pentachlorophenol, or copper-chrome-arsenic; wood from old growth
30 forests; or municipal solid waste.

31 (b) "Fuel cell" means an electrochemical reaction that generates
32 electricity by combining atoms of hydrogen and oxygen in the presence
33 of a catalyst.

34 (c) "Landfill gas" means biomass fuel, of the type qualified for
35 federal tax credits under Title 26 U.S.C. Sec. 29 of the federal
36 internal revenue code, collected from a "landfill" as defined under RCW
37 70.95.030.

1 (d)(i) "Machinery and equipment" means fixtures, devices, and
2 support facilities that are integral and necessary to the generation of
3 electricity using fuel cells, wind, sun, biomass energy, tidal or wave
4 energy, geothermal resources, anaerobic digestion, technology that
5 converts otherwise lost energy from exhaust, or landfill gas as the
6 principal source of power.

7 (ii) "Machinery and equipment" does not include: (A) Hand-powered
8 tools; (B) property with a useful life of less than one year; (C)
9 repair parts required to restore machinery and equipment to normal
10 working order; (D) replacement parts that do not increase productivity,
11 improve efficiency, or extend the useful life of machinery and
12 equipment; (E) buildings; or (F) building fixtures that are not
13 integral and necessary to the generation of electricity that are
14 permanently affixed to and become a physical part of a building.

15 (e) "Local electric utility" means an electrical company whose
16 rates are regulated by the Washington utilities and transportation
17 commission under chapter 80.28 RCW; a municipal electric utility formed
18 under Title 35 RCW, a public utility district formed under Title 54
19 RCW, an irrigation district formed under chapter 87.03 RCW, a
20 cooperative formed under chapter 23.86 RCW, or a mutual corporation or
21 association formed under chapter 24.06 RCW, that is engaged in the
22 business of distributing electricity to more than one retail electric
23 customer in the state; and a joint operating agency formed under
24 chapter 43.52 RCW.

25 (f) "Person" means the same as defined under RCW 82.04.030.

26 (g) "Construction of the project began" has the same meaning as
27 Section 1603(a)(2) of P.L. 111-5, the American recovery and
28 reinvestment act, and subsequent guidance provided by the United States
29 department of the treasury.

30 (3)(a) Machinery and equipment is "used directly" in generating
31 electricity by wind energy, solar energy, biomass energy, tidal or wave
32 energy, geothermal resources, anaerobic digestion, technology that
33 converts otherwise lost energy from exhaust, or landfill gas power if
34 it provides any part of the process that captures the energy of the
35 wind, sun, biomass energy, tidal or wave energy, geothermal resources,
36 anaerobic digestion, technology that converts otherwise lost energy
37 from exhaust, or landfill gas, converts that energy to electricity, and

1 stores, transforms, or transmits that electricity for entry into or
2 operation in parallel with electric transmission and distribution
3 systems.

4 (b) Machinery and equipment is "used directly" in generating
5 electricity by fuel cells if it provides any part of the process that
6 captures the energy of the fuel, converts that energy to electricity,
7 and stores, transforms, or transmits that electricity for entry into or
8 operation in parallel with electric transmission and distribution
9 systems.

10 (4)(a) A purchaser claiming an exemption in the form of a
11 remittance under subsection (1)(~~(e)~~) (d) of this section must pay the
12 tax imposed by RCW 82.08.020 and all applicable local sales taxes
13 imposed under the authority of chapters 82.14 and 81.104 RCW. The
14 purchaser may then apply to the department for remittance in a form and
15 manner prescribed by the department. A purchaser may not apply for a
16 remittance under this section more frequently than once per quarter.
17 The purchaser must specify the amount of exempted tax claimed and the
18 qualifying purchases for which the exemption is claimed. The purchaser
19 must retain, in adequate detail, records to enable the department to
20 determine whether the purchaser is entitled to an exemption under this
21 section, including: Invoices; proof of tax paid; and documents
22 describing the machinery and equipment.

23 (b) The department must determine eligibility under this section
24 based on the information provided by the purchaser, which is subject to
25 audit verification by the department. The department must on a
26 quarterly basis remit exempted amounts to qualifying purchasers who
27 submitted applications during the previous quarter.

28 (5) This section expires July 1, 2013.

29 **Sec. 1602.** RCW 82.12.962 and 2009 c 469 s 102 are each amended to
30 read as follows:

31 (1)(a) Except as provided in RCW 82.12.963, consumers who have paid
32 the tax imposed by RCW 82.12.020 on machinery and equipment used
33 directly in generating electricity using fuel cells, wind, sun, biomass
34 energy, tidal or wave energy, geothermal resources, anaerobic
35 digestion, technology that converts otherwise lost energy from exhaust,
36 or landfill gas as the principal source of power, or to sales of or
37 charges made for labor and services rendered in respect to installing

1 such machinery and equipment, are eligible for an exemption as provided
2 in this section, but only if the purchaser develops with such
3 machinery, equipment, and labor a facility capable of generating not
4 less than one thousand watts of electricity.

5 (b) Except for energy generated by wind, beginning on July 1, 2009,
6 through June 30, 2011, the provisions of this chapter do not apply in
7 respect to the use of machinery and equipment described in (a) of this
8 subsection that are used directly in generating electricity or to sales
9 of or charges made for labor and services rendered in respect to
10 installing such machinery and equipment.

11 (c)(i) For energy generated by wind, except as provided otherwise
12 in (ii) of this subsection (c), beginning on July 1, 2010, through June
13 30, 2011, the provisions of this chapter do not apply in respect to the
14 use by a local electric utility, or by a person contracting with a
15 local electric utility for the sale of electric power generated by a
16 facility containing such machinery and equipment, of machinery and
17 equipment described in (a) of this subsection that are used directly in
18 generating electricity or to sales of or charges made for labor and
19 services rendered in respect to installing such machinery and
20 equipment.

21 (ii) Notwithstanding the limitations set forth in (i) of this
22 subsection (1)(c), and regardless of the identity of the purchaser, any
23 project using wind to generate electricity may receive the exemption
24 from sales tax provided under this subsection (1)(c) if construction of
25 the project began by December 31, 2010.

26 (d) Except for energy generated by wind, beginning on July 1, 2011,
27 through June 30, 2013, the amount of the exemption under this
28 subsection (1) is equal to seventy-five percent of the state and local
29 sales tax paid. The purchaser is eligible for an exemption under this
30 subsection (1)(d) in the form of a remittance.

31 (e)(i) For energy generated by wind, except as provided otherwise
32 in (ii) of this subsection (e), beginning on July 1, 2011, through June
33 30, 2013, the amount of the exemption under this subsection (1) is
34 equal to seventy-five percent of the state and local sales tax paid by
35 a local electric utility for such machinery and equipment, or to a
36 person contracting with a local electric utility for the sale of
37 electric power generated by a facility containing such machinery and

1 equipment. The consumer is eligible for an exemption under this
2 subsection (1)(~~(e)~~) (e) in the form of a remittance.

3 (ii) Notwithstanding the limitations set forth in (i) of this
4 subsection (1)(e), and regardless of the identity of the purchaser, any
5 project using wind to generate electricity may receive the exemption
6 from sales tax provided under this subsection (1)(e) if construction of
7 the project began by December 31, 2010.

8 (2)(a) A person claiming an exemption in the form of a remittance
9 under subsection (1)(~~(e)~~) (e) of this section must pay the tax
10 imposed by RCW 82.12.020 and all applicable local use taxes imposed
11 under the authority of chapters 82.14 and 81.104 RCW. The consumer may
12 then apply to the department for remittance in a form and manner
13 prescribed by the department. A consumer may not apply for a
14 remittance under this section more frequently than once per quarter.
15 The consumer must specify the amount of exempted tax claimed and the
16 qualifying purchases or acquisitions for which the exemption is
17 claimed. The consumer must retain, in adequate detail, records to
18 enable the department to determine whether the consumer is entitled to
19 an exemption under this section, including: Invoices; proof of tax
20 paid; and documents describing the machinery and equipment.

21 (b) The department must determine eligibility under this section
22 based on the information provided by the consumer, which is subject to
23 audit verification by the department. The department must on a
24 quarterly basis remit exempted amounts to qualifying consumers who
25 submitted applications during the previous quarter.

26 (3) Purchases exempt under RCW 82.08.962 are also exempt from the
27 tax imposed under RCW 82.12.020.

28 (4) The definitions in RCW 82.08.962 apply to this section.

29 (5) This section expires June 30, 2013.

30 PART XVII

31 Property Management Salaries

32 NEW SECTION. Sec. 1701. RCW 82.04.394 (Exemptions--Amounts
33 received by property management company for on-site personnel) and 1998
34 c 338 s 2 are each repealed.

PART XVIII

Repealing the Sales and Use Tax Exemption on Bottled Water

Sec. 1801. RCW 82.08.0293 and 2009 c 483 s 2 are each amended to read as follows:

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

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

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

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

(a) "Prepared food" means:

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

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

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

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

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

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American

1 industry classification system (NAICS) classification is manufacturing
2 in sector 311, except subsector 3118 (bakeries), as provided in the
3 "North American industry classification system--United States, 2002";

4 (ii) Food sold in an unheated state by weight or volume as a single
5 item; or

6 (iii) Bakery items. The term "bakery items" includes bread, rolls,
7 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
8 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

9 (c) "Soft drinks" means nonalcoholic beverages that contain natural
10 or artificial sweeteners. Soft drinks do not include beverages that
11 contain: Milk or milk products; soy, rice, or similar milk
12 substitutes; or greater than fifty percent of vegetable or fruit juice
13 by volume.

14 (d) "Dietary supplement" means any product, other than tobacco,
15 intended to supplement the diet that:

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

17 (A) A vitamin;

18 (B) A mineral;

19 (C) An herb or other botanical;

20 (D) An amino acid;

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

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

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

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

33 (e) "Bottled water" means water that is placed in a sealed
34 container or package for human consumption or other consumer uses.
35 Bottled water is calorie free and does not contain sweeteners or other
36 additives except that it may contain: (i) Antimicrobial agents; (ii)
37 fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes;
38 (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts,

1 or essences derived from a spice or fruit. "Bottled water" includes
2 water that is delivered to the buyer in a reusable container that is
3 not sold with the water.

4 (3) Notwithstanding anything in this section to the contrary, the
5 exemption of "food and food ingredients" provided in this section shall
6 apply to food and food ingredients that are furnished, prepared, or
7 served as meals:

8 (a) Under a state administered nutrition program for the aged as
9 provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW
10 74.38.040(6);

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

14 (c) That are provided to residents, sixty-two years of age or
15 older, of a qualified low-income senior housing facility by the lessor
16 or operator of the facility. The sale of a meal that is billed to both
17 spouses of a marital community or both domestic partners of a domestic
18 partnership meets the age requirement in this subsection (3)(c) if at
19 least one of the spouses or domestic partners is at least sixty-two
20 years of age. For purposes of this subsection, "qualified low-income
21 senior housing facility" means a facility:

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

25 (ii) That has been partially funded under ((Title)) 42 U.S.C. Sec.
26 1485 ((of the federal internal revenue code)); and

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

30 (4)(a) Subsection (1) of this section notwithstanding, the retail
31 sale of food and food ingredients is subject to sales tax under RCW
32 82.08.020 if the food and food ingredients are sold through a vending
33 machine, and in this case the selling price for purposes of RCW
34 82.08.020 is fifty-seven percent of the gross receipts.

35 (b) This subsection (4) does not apply to hot prepared food and
36 food ingredients, other than food and food ingredients which are heated
37 after they have been dispensed from the vending machine.

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

4 **Sec. 1802.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
5 read as follows:

6 (1) The provisions of this chapter (~~shall~~) do not apply in
7 respect to the use of food and food ingredients for human consumption.
8 "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

9 (2) The exemption of "food and food ingredients" provided for in
10 subsection (1) of this section (~~shall~~) does not apply to prepared
11 food, soft drinks, bottled water, or dietary supplements. "Prepared
12 food," "soft drinks," (~~and~~) "dietary supplements," and "bottled
13 water" have the same meanings as in RCW 82.08.0293.

14 (3) Notwithstanding anything in this section to the contrary, the
15 exemption of "food and food ingredients" provided in this section
16 (~~shall apply~~) applies to food and food ingredients which are
17 furnished, prepared, or served as meals:

18 (a) Under a state administered nutrition program for the aged as
19 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
20 74.38.040(6);

21 (b) Which are provided to senior citizens, individuals with
22 disabilities, or low-income persons by a not-for-profit organization
23 organized under chapter 24.03 or 24.12 RCW; or

24 (c) That are provided to residents, sixty-two years of age or
25 older, of a qualified low-income senior housing facility by the lessor
26 or operator of the facility. The sale of a meal that is billed to both
27 spouses of a marital community or both domestic partners of a domestic
28 partnership meets the age requirement in this subsection (3)(c) if at
29 least one of the spouses or domestic partners is at least sixty-two
30 years of age. For purposes of this subsection, "qualified low-income
31 senior housing facility" has the same meaning as in RCW 82.08.0293.

32 NEW SECTION. **Sec. 1803.** A new section is added to chapter 82.08
33 RCW to read as follows:

34 The tax levied by RCW 82.08.020 does not apply to sales of bottled
35 water for human use dispensed or to be dispensed to patients, pursuant
36 to a prescription for use in the cure, mitigation, treatment, or

1 prevention of disease or medical condition. "Prescription" means an
2 order, formula, or recipe issued in any form of oral, written,
3 electronic, or other means of transmission by a duly licensed
4 practitioner authorized by the laws of this state to prescribe.

5 NEW SECTION. **Sec. 1804.** A new section is added to chapter 82.12
6 RCW to read as follows:

7 The provisions of this chapter do not apply in respect to the use
8 of bottled water for human use dispensed or to be dispensed to
9 patients, pursuant to a prescription for use in the cure, mitigation,
10 treatment, or prevention of disease or medical condition.
11 "Prescription" means an order, formula, or recipe issued in any form of
12 oral, written, electronic, or other means of transmission by a duly
13 licensed practitioner authorized by the laws of this state to
14 prescribe.

15 NEW SECTION. **Sec. 1805.** A new section is added to chapter 82.08
16 RCW to read as follows:

17 (1) The tax levied by RCW 82.08.020 shall not apply to sales of
18 bottled water for human use to persons who do not otherwise have a
19 readily available source of potable water and who provide the seller
20 with an exemption certificate in a form and manner prescribed by the
21 department. The seller shall retain a copy of the certificate for the
22 seller's files.

23 (2) The department may waive the requirement for an exemption
24 certificate in the event of disaster or similar circumstance.

25 NEW SECTION. **Sec. 1806.** A new section is added to chapter 82.12
26 RCW to read as follows:

27 The provisions of this chapter shall not apply in respect to the
28 use of bottled water for human use by persons who do not otherwise have
29 a readily available source of potable water.

30 **PART XIX**
31 **Temporarily Increasing the Business and Occupation Tax on Service**
32 **Businesses while Increasing the Small Business Credit for the Same**
33 **Businesses**

1 NEW SECTION. **Sec. 1901.** A new section is added to chapter 82.04
2 RCW to read as follows:

3 Beginning July 1, 2010, through June 30, 2013, an additional rate
4 of tax of .25 percent is added to the rate provided for in RCW
5 82.04.255, 82.04.260(9), 82.04.285, and 82.04.290(2)(a).

6 **Sec. 1902.** RCW 82.04.4451 and 1997 c 238 s 2 are each amended to
7 read as follows:

8 (1) In computing the tax imposed under this chapter, a credit is
9 allowed against the amount of tax otherwise due under this chapter, as
10 provided in this section. The maximum credit for a taxpayer, except
11 for taxpayers subject to tax under RCW 82.04.290(2)(a), 82.04.255, and
12 82.04.285, for a reporting period is thirty-five dollars multiplied by
13 the number of months in the reporting period, as determined under RCW
14 82.32.045. The maximum credit for a taxpayer, subject to the tax under
15 RCW 82.04.290(2)(a), 82.04.255, and 82.04.285, for a reporting period
16 is seventy dollars multiplied by the number of months in the reporting
17 period, as determined under RCW 82.32.045.

18 (2) When the amount of tax otherwise due under this chapter is
19 equal to or less than the maximum credit, a credit is allowed equal to
20 the amount of tax otherwise due under this chapter.

21 (3) When the amount of tax otherwise due under this chapter exceeds
22 the maximum credit, a reduced credit is allowed equal to twice the
23 maximum credit, minus the tax otherwise due under this chapter, but not
24 less than zero.

25 (4) The department may prepare a tax credit table consisting of tax
26 ranges using increments of no more than five dollars and a
27 corresponding tax credit to be applied to those tax ranges. The table
28 shall be prepared in such a manner that no taxpayer will owe a greater
29 amount of tax by using the table than would be owed by performing the
30 calculation under subsections (1) through (3) of this section. A table
31 prepared by the department under this subsection (~~shall~~) must be used
32 by all taxpayers in taking the credit provided in this section.

33 **Sec. 1903.** RCW 82.32.045 and 2006 c 256 s 1 are each amended to
34 read as follows:

35 (1) Except as otherwise provided in this chapter, payments of the
36 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,

1 along with reports and returns on forms prescribed by the department,
2 are due monthly within twenty-five days after the end of the month in
3 which the taxable activities occur.

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

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

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

16 (a) The person's value of products, gross proceeds of sales, or
17 gross income of the business, from all business activities taxable
18 under chapter 82.04 RCW, is less than twenty-eight thousand dollars per
19 year, except for businesses paying the tax under RCW 82.04.290(2)(a),
20 82.04.255, and 82.04.285, the amount of business activities taxable
21 under chapter 82.04 RCW is less than fifty-six thousand dollars per
22 year;

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

26 (c) The person is not required to collect or pay to the department
27 of revenue any other tax or fee which the department is authorized to
28 collect.

29 PART XX

30 Temporarily Increasing the Sales Tax for Educational Purposes While 31 Providing a Working Family Tax Exemption

32 NEW SECTION. **Sec. 2001.** The legislature finds that the economic
33 crisis has impacted the many Washington families which do not earn
34 enough annually to keep pace with increasing health care, child care,
35 and work-related expenses. The legislature further finds that revenues
36 are insufficient to maintain necessary funding for education, public

1 safety, health care, and safety net services for elderly, disabled, and
2 vulnerable people during the unprecedented economic crisis in the 2009-
3 2011 fiscal biennium. Therefore, it is the intent of the legislature
4 to provide a means to stabilize revenue collections by imposing a
5 temporary sales and use tax. It is also the legislature's intent to
6 provide relief to lower-income working families in Washington in the
7 form of a sales and use tax exemption.

8 **Sec. 2002.** RCW 82.08.020 and 2009 c 469 s 802 are each amended to
9 read as follows:

10 (1) There is levied and (~~there shall be~~) collected a tax on each
11 retail sale in this state equal to six and five-tenths percent of the
12 selling price.

13 (2) There is levied and (~~there shall be~~) collected an additional
14 tax on each retail car rental, regardless of whether the vehicle is
15 licensed in this state, equal to five and nine-tenths percent of the
16 selling price. The revenue collected under this subsection (~~shall~~)
17 must be deposited in the multimodal transportation account created in
18 RCW 47.66.070.

19 (3) Beginning July 1, 2003, there is levied and collected an
20 additional tax of three-tenths of one percent of the selling price on
21 each retail sale of a motor vehicle in this state, other than retail
22 car rentals taxed under subsection (2) of this section. The revenue
23 collected under this subsection (~~shall~~) must be deposited in the
24 multimodal transportation account created in RCW 47.66.070.

25 (4) For purposes of subsection (3) of this section, "motor vehicle"
26 has the meaning provided in RCW 46.04.320, but does not include farm
27 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,
28 off-road and nonhighway vehicles as defined in RCW 46.09.020, and
29 snowmobiles as defined in RCW 46.10.010.

30 (5) From June 1, 2010, until June 30, 2013, in addition to the tax
31 imposed upon each retail sale in this state set forth in subsection (1)
32 of this section, there is imposed a tax in an amount equal to three-
33 tenths of one percent of the selling price.

34 (6) Beginning on December 8, 2005, 0.16 percent of the taxes
35 collected under subsection (1) of this section (~~shall~~) must be
36 dedicated to funding comprehensive performance audits required under

1 RCW 43.09.470. The revenue identified in this subsection (~~shall~~)
2 must be deposited in the performance audits of government account
3 created in RCW 43.09.475.

4 (~~(6)~~) (7) The taxes imposed under this chapter (~~shall~~) apply to
5 successive retail sales of the same property.

6 (~~(7)~~) (8)(a) Until January 1, 2011, the tax imposed in subsection
7 (3) of this section and the dedication of revenue provided for in
8 subsection (~~(5)~~) (6) of this section(~~(7)~~) do not apply with respect
9 to the sales of new passenger cars, light duty trucks, and medium duty
10 passenger vehicles, which utilize hybrid technology and have a United
11 States environmental protection agency estimated highway gasoline
12 mileage rating of at least forty miles per gallon.

13 (b) As used in this subsection, "hybrid technology" means
14 propulsion units powered by both electricity and gasoline.

15 (~~(8)~~) (9) The rates provided in this section apply to taxes
16 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

17 **Sec. 2003.** RCW 82.08.020 and 2006 c 1 s 3 are each amended to read
18 as follows:

19 (1) There is levied and (~~there shall be~~) collected a tax on each
20 retail sale in this state equal to six and five-tenths percent of the
21 selling price.

22 (2) There is levied and (~~there shall be~~) collected an additional
23 tax on each retail car rental, regardless of whether the vehicle is
24 licensed in this state, equal to five and nine-tenths percent of the
25 selling price. The revenue collected under this subsection (~~shall~~)
26 must be deposited in the multimodal transportation account created in
27 RCW 47.66.070.

28 (3) Beginning July 1, 2003, there is levied and collected an
29 additional tax of three-tenths of one percent of the selling price on
30 each retail sale of a motor vehicle in this state, other than retail
31 car rentals taxed under subsection (2) of this section. The revenue
32 collected under this subsection (~~shall~~) must be deposited in the
33 multimodal transportation account created in RCW 47.66.070.

34 (4) For purposes of subsection (3) of this section, "motor vehicle"
35 has the meaning provided in RCW 46.04.320, but does not include farm
36 tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181,

1 off-road and nonhighway vehicles as defined in RCW 46.09.020, and
2 snowmobiles as defined in RCW 46.10.010.

3 (5) From June 1, 2010, until June 30, 2013, in addition to the tax
4 imposed upon each retail sale in this state set forth in subsection (1)
5 of this section, there is imposed a tax in an amount equal to three-
6 tenths of one percent of the selling price. During any period in which
7 the tax in this subsection (5) is imposed beyond June 30, 2013, no
8 member of the legislature shall receive any allowances for expenses
9 under Title 44 RCW, including per diem expenses and quarterly expense
10 allowances.

11 (6) Beginning on December 8, 2005, 0.16 percent of the taxes
12 collected under subsection (1) of this section (~~shall~~) must be
13 dedicated to funding comprehensive performance audits required under
14 RCW 43.09.470. The revenue identified in this subsection (~~shall~~)
15 must be deposited in the performance audits of government account
16 created in RCW 43.09.475.

17 (~~(6)~~) (7) The taxes imposed under this chapter (~~shall~~) apply to
18 successive retail sales of the same property.

19 (~~(7)~~) (8) The rates provided in this section apply to taxes
20 imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

21 **Sec. 2004.** RCW 44.04.120 and 2009 c 549 s 6002 are each amended to
22 read as follows:

23 Except as provided in RCW 82.08.020(5), each member of the senate
24 or house of representatives when serving on official legislative
25 business shall be entitled to receive, in lieu of per diem or any other
26 payment, for each day or major portion thereof in which he or she is
27 actually engaged in legislative business or business of the committee,
28 commission, or council, notwithstanding any laws to the contrary, an
29 allowance in an amount fixed by the secretary of the senate and chief
30 clerk of the house, respectively, in accordance with applicable rules
31 and resolutions of each body. Such allowance shall be reasonably
32 calculated to reimburse expenses, exclusive of mileage, which are
33 ordinary and necessary in the conduct of legislative business,
34 recognizing cost variances which are encountered in different locales.
35 The allowance authorized shall not exceed the greater of forty-four
36 dollars per day or the maximum daily amount determined under RCW
37 43.03.050, as now or hereafter amended. In addition, a mileage

1 allowance shall be paid at the rate per mile provided for in RCW
2 43.03.060, as now or hereafter amended, when authorized by the house,
3 committee, commission, or council of which he or she is a member and on
4 the business of which he or she is engaged.

5 **Sec. 2005.** RCW 82.08.0206 and 2008 c 325 s 2 are each amended to
6 read as follows:

7 (1) A working families' tax exemption, in the form of a remittance
8 tax due under this chapter and chapter 82.12 RCW, is provided to
9 eligible low-income persons for sales taxes paid under this chapter
10 after (~~(January 1, 2008)~~) June 1, 2010.

11 (2) For purposes of the exemption in this section, an eligible low-
12 income person is:

13 (a) An individual, or an individual and that individual's spouse if
14 they file a federal joint income tax return;

15 (b) (~~(An individual who)~~) An individual who is eligible for, and
16 is granted, the credit provided in (~~(Title)~~) 26 U.S.C. Sec. 32 of the
17 federal internal revenue code; and

18 (c) (~~(An individual who)~~) An individual who properly files a
19 federal income tax return as a Washington resident, and has been a
20 resident of the state of Washington more than one hundred eighty days
21 of the year for which the exemption is claimed.

22 (3)(a) For remittances made in (~~(2009 and 2010)~~) 2011, the working
23 families' tax exemption for the prior year is a retail sales tax
24 exemption equal to the greater of twenty-five dollars or five percent
25 of the credit granted as a result of (~~(Title)~~) 26 U.S.C. Sec. 32 of the
26 federal internal revenue code in the most recent year for which data is
27 available (~~(or twenty-five dollars)~~), adjusted by a proportionate
28 amount reflecting the seven months of increased tax imposed in sections
29 2002 and 2003 of this act in calendar year 2010.

30 (b) For remittances made in 2012, the working families' tax
31 exemption for the prior year is a retail sales tax exemption equal to
32 the greater of five percent of the credit granted as a result of 26
33 U.S.C. Sec. 32 of the federal internal revenue code in the most recent
34 year for which data is available or twenty-five dollars.

35 (c) For (~~(2011)~~) 2013 and thereafter, the working families' tax
36 exemption for the prior year is equal to the greater of ten percent of

1 the credit granted as a result of (~~Title~~) 26 U.S.C. Sec. 32 of the
2 federal internal revenue code in the most recent year for which data is
3 available or fifty dollars.

4 (4) For any fiscal period, the working families' tax exemption
5 authorized under this section (~~shall~~) must be approved by the
6 legislature in the state omnibus appropriations act before persons may
7 claim the exemption during the fiscal period.

8 (5) The working families' tax exemption (~~shall~~) must be
9 administered as provided in this subsection.

10 (a) An eligible low-income person claiming an exemption under this
11 section must pay the tax imposed under chapters 82.08, 82.12, and 82.14
12 RCW in the year for which the exemption is claimed. The eligible low-
13 income person may then apply to the department for the remittance as
14 calculated under subsection (3) of this section.

15 (b) Application (~~shall~~) must be made to the department in a form
16 and manner determined by the department, (~~but the~~) except for the
17 following:

18 (i) The department must provide alternative filing methods for
19 applicants who do not have access to electronic filing; and

20 (ii) The department is directed to implement joint filing for
21 exemptions claimed under this section in 2012 and thereafter with the
22 federal joint income tax return, provided approval is granted by the
23 internal revenue service.

24 (c) Application for the exemption remittance under this section
25 must be made in the year following the year for which the federal
26 return was filed, but in no case may any remittance be provided for any
27 period before (~~January 1, 2008~~) June 1, 2010. The department may use
28 the best available data to process the exemption remittance. The
29 department (~~shall~~) must begin accepting applications (~~October 1,~~
30 ~~2009~~) January 1, 2011.

31 (d) The department (~~shall~~) must review the application and
32 determine eligibility for the working families' tax exemption based on
33 information provided by the applicant and through audit and other
34 administrative records, including, when it deems it necessary,
35 verification through internal revenue service data.

36 (e) The department (~~shall~~) must remit the exempted amounts to
37 eligible low-income persons who submitted applications. Remittances
38 may be made by electronic funds transfer or other means.

1 (f) The department may, in conjunction with other agencies or
2 organizations, design and implement a public information campaign to
3 inform potentially eligible persons of the existence of and
4 requirements for this exemption.

5 (g) The department may contact persons who appear to be eligible
6 low-income persons as a result of information received from the
7 internal revenue service under such conditions and requirements as the
8 internal revenue service may by law require.

9 (6) The provisions of chapter 82.32 RCW apply to the exemption in
10 this section.

11 (7) The department may adopt rules necessary to implement this
12 section.

13 (8) For the remittances provided in fiscal year 2015 and
14 thereafter, the department ((shall)) must limit its ongoing costs
15 ((for)) to administer the exemption program to ((the initial start-up
16 costs to implement the program. The state omnibus appropriations act
17 shall specify funding to be used for the ongoing administrative costs
18 of the program. These ongoing administrative costs include, but are
19 not limited to, costs for: The processing of internet and mail
20 applications, verification of application claims, compliance and
21 collections, additional full-time employees at the department's call
22 center, processing warrants, updating printed materials and web
23 information, media advertising, and support and maintenance of computer
24 systems)) no more than five percent of the total exemptions provided
25 each year.

26 **Sec. 2006.** RCW 82.08.064 and 2003 c 361 s 304 and 2003 c 168 s 205
27 are each reenacted and amended to read as follows:

28 (1) A sales and use tax rate change under this chapter or chapter
29 82.12 RCW shall be imposed (a) no sooner than seventy-five days after
30 its enactment into law and (b) only on the first day of January, April,
31 July, or October.

32 (2) Subsection (1) of this section does not apply to the tax rate
33 change in section 301, chapter 361, Laws of 2003 or to the tax rate
34 changes in sections 2002 and 2003 of this act.

35 (3)(a) A sales and use tax rate increase under this chapter or
36 chapter 82.12 RCW imposed on services applies to the first billing
37 period starting on or after the effective date of the increase.

1 (b) A sales and use tax rate decrease under this chapter or chapter
2 82.12 RCW imposed on services applies to bills rendered on or after the
3 effective date of the decrease.

4 (c) For the purposes of this subsection (3), "services" means
5 retail services such as installing and constructing and retail services
6 such as telecommunications, but does not include services such as
7 tattooing.

8 **Sec. 2007.** RCW 36.100.040 and 2008 c 137 s 5 are each amended to
9 read as follows:

10 (1) A public facilities district may impose an excise tax on the
11 sale of or charge made for the furnishing of lodging that is subject to
12 tax under chapter 82.08 RCW, except that no such tax may be levied on
13 any premises having fewer than forty lodging units. However, if a
14 public facilities district has not imposed such an excise tax prior to
15 December 31, 1995, the public facilities district may only impose the
16 excise tax if a ballot proposition authorizing the imposition of the
17 tax has been approved by a simple majority vote of voters of the public
18 facilities district voting on the proposition.

19 (2) The rate of the tax (~~(shall)~~) may not exceed two percent and
20 the proceeds of the tax shall only be used for the acquisition, design,
21 construction, remodeling, maintenance, equipping, reequipping,
22 repairing, and operation of its public facilities. This excise tax
23 (~~(shall)~~) may not be imposed until the district has approved the
24 proposal to acquire, design, and construct the public facilities.

25 (3) A public facilities district may not impose the tax authorized
26 in this section if, after the tax authorized in this section was
27 imposed, the effective combined rate of state and local excise taxes,
28 including sales and use taxes and excise taxes on lodging, imposed on
29 the sale of or charge made for furnishing of lodging in any
30 jurisdiction in the public facilities district exceeds eleven and one-
31 half percent.

32 (4) In determining the effective combined rate of tax, the tax rate
33 under RCW 82.08.020(5) is not included.

34 (5) The tax imposed in this section does not apply to sales of
35 temporary medical housing exempt under RCW 82.08.997.

1 **Sec. 2008.** RCW 67.28.181 and 2004 c 79 s 8 are each amended to
2 read as follows:

3 (1) The legislative body of any municipality may impose an excise
4 tax on the sale of or charge made for the furnishing of lodging that is
5 subject to tax under chapter 82.08 RCW. The rate of tax (~~shall~~) may
6 not exceed the lesser of two percent or a rate that, when combined with
7 all other taxes imposed upon sales of lodging within the municipality
8 under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW,
9 equals twelve percent. A tax under this chapter (~~shall~~) may not be
10 imposed in increments smaller than tenths of a percent.

11 (2) Notwithstanding subsection (1) of this section:

12 (a) If a municipality was authorized to impose taxes under this
13 chapter or RCW 67.40.100 or both with a total rate exceeding four
14 percent before July 27, 1997, such total authorization (~~shall~~) must
15 continue through January 31, 1999, and thereafter the municipality may
16 impose a tax under this section at a rate not exceeding the rate
17 actually imposed by the municipality on January 31, 1999.

18 (b) If a city or town, other than a municipality imposing a tax
19 under (a) of this subsection, is located in a county that imposed taxes
20 under this chapter with a total rate of four percent or more on January
21 1, 1997, the city or town may not impose a tax under this section.

22 (c) If a city has a population of four hundred thousand or more and
23 is located in a county with a population of one million or more, the
24 rate of tax imposed under this chapter by the city (~~shall~~) may not
25 exceed the lesser of four percent or a rate that, when combined with
26 all other taxes imposed upon sales of lodging in the municipality under
27 this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals
28 fifteen and two-tenths percent.

29 (d) If a municipality was authorized to impose taxes under this
30 chapter or RCW 67.40.100, or both, at a rate equal to six percent
31 before January 1, 1998, the municipality may impose a tax under this
32 section at a rate not exceeding the rate actually imposed by the
33 municipality on January 1, 1998.

34 (3) Any county ordinance or resolution adopted under this section
35 shall contain a provision allowing a credit against the county tax for
36 the full amount of any city or town tax imposed under this section upon
37 the same taxable event.

1 (4) In determining the effective combined rate of tax, the tax rate
2 under RCW 82.08.020(5) is not included.

3 **Sec. 2009.** RCW 82.14.410 and 2001 c 6 s 1 are each amended to read
4 as follows:

5 (1) A local sales and use tax change adopted after December 1,
6 2000, must provide an exemption for those sales of lodging for which,
7 but for the exemption, the total sales tax rate imposed on sales of
8 lodging would exceed the greater of:

9 (a) Twelve percent; or

10 (b) The total sales tax rate that would have applied to the sale of
11 lodging if the sale were made on December 1, 2000.

12 (2) For the purposes of this section:

13 (a) "Local sales and use tax change" is defined as provided in RCW
14 82.14.055.

15 (b) "Sale of lodging" means the sale of or charge made for the
16 furnishing of lodging and all other services by a hotel, rooming house,
17 tourist court, motel, trailer camp, and the granting of any similar
18 license to use real property.

19 (c) "Total sales tax rate" means the combined rates of all state
20 and local taxes imposed under this chapter and chapters 36.100, 67.28,
21 67.40, and 82.08 RCW, and any other tax authorized after March 29,
22 2001, if the tax is in the nature of a sales tax collected from the
23 buyer, but excluding taxes imposed under RCW 81.104.170 before December
24 1, 2000, and taxes imposed under RCW 82.08.020(5).

25 **PART XXI**

26 **Miscellaneous Provisions**

27 **NEW SECTION. Sec. 2101.** (1) Except as provided in subsection (2)
28 of this section, if any provision of sections 101 through 110 of this
29 act or its application to any person or circumstance is held invalid,
30 the remainder of sections 101 through 110 of this act or the
31 application of the provision to other persons or circumstances is not
32 affected.

33 (2) If a court of competent jurisdiction, in a final judgment not
34 subject to appeal, adjudges any provision of section 104(1)(c) of this

1 act unconstitutional or otherwise invalid, sections 101 through 110 of
2 this act are null and void in their entirety.

3 NEW SECTION. **Sec. 2102.** Sections 101 through 110 of this act
4 apply with respect to gross income of the business, as defined in RCW
5 82.04.080, including gross income from royalties as defined in RCW
6 82.04.2907, generated on and after July 1, 2010. For purposes of
7 calculating the thresholds in section 104(1)(c) of this act for the
8 2010 tax year, property, payroll, and receipts are based on the entire
9 2010 tax year.

10 NEW SECTION. **Sec. 2103.** Sections 201 through 212 of this act must
11 be construed liberally to effectuate the legislature's intent to ensure
12 that all businesses and individuals pay their fair share of taxes.

13 NEW SECTION. **Sec. 2104.** (1) Except as provided in subsection (2)
14 of this section, section 201 of this act applies to tax periods
15 beginning January 1, 2006.

16 (2) Section 201 of this act does not apply to any tax periods
17 ending before July 1, 2010, that were included in a completed field
18 audit conducted by the department.

19 NEW SECTION. **Sec. 2105.** Sections 302 and 502 of this act apply
20 both retroactively and prospectively.

21 NEW SECTION. **Sec. 2106.** Section 302 of this act does not affect
22 any final judgments, not subject to appeal, entered by a court of
23 competent jurisdiction before the effective date of this section.

24 NEW SECTION. **Sec. 2107.** Sections 601 and 602 of this act apply to
25 transfers or conveyances as described in RCW 82.45.010(3)(i) occurring
26 on and after June 1, 2010.

27 NEW SECTION. **Sec. 2108.** Sections 301, 302, and 2105 of this act
28 are necessary for the immediate preservation of the public peace,
29 health, or safety, or support of the state government and its existing
30 public institutions, and take effect immediately.

1 NEW SECTION. **Sec. 2109.** Except for sections 301, 302, 406, 2003,
2 and 2105 of this act, this act is necessary for the immediate
3 preservation of the public peace, health, or safety, or support of the
4 state government and its existing public institutions, and takes effect
5 June 1, 2010.

6 NEW SECTION. **Sec. 2110.** Section 405 of this act expires July 1,
7 2011.

8 NEW SECTION. **Sec. 2111.** Section 406 of this act takes effect July
9 1, 2011.

10 NEW SECTION. **Sec. 2112.** Sections 1102 and 1103 of this act apply
11 to claims for credit or refund filed with the department of revenue
12 after June 30, 2010.

13 NEW SECTION. **Sec. 2113.** Section 1401 of this act applies
14 prospectively only.

15 NEW SECTION. **Sec. 2114.** Section 2002 of this act expires January
16 1, 2011.

17 NEW SECTION. **Sec. 2115.** Section 2003 of this act takes effect
18 January 1, 2011.

19 NEW SECTION. **Sec. 2116.** Sections 1801 through 1804 of this act
20 expire June 1, 2013.

21 NEW SECTION. **Sec. 2117.** In accordance with Article VIII, section
22 5 of the state Constitution, sections 502 and 2105 of this act do not
23 authorize refunds of business and occupation tax validly collected
24 before July 1, 2010, on amounts received by an individual from a
25 corporation as compensation for serving as a member of that
26 corporation's board of directors.

27 NEW SECTION. **Sec. 2118.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

--- END ---