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HOUSE BILL 2093

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State of Washington                      62nd Legislature                      2011 Regular Session

By Representatives Hasegawa, Reykdal, and Roberts

Read first time 04/14/11. Referred to Committee on Ways & Means.

1            AN ACT Relating to community reinvestment of oil windfall profits;  
2 adding a new title to the Revised Code of Washington to be codified as  
3 Title 82A RCW; prescribing penalties; and providing an effective date.

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

5            NEW SECTION.    **Sec. 1.**    FINDINGS AND INTENT. (1) The legislature  
6 finds that in the process of mitigating a projected revenue shortfall  
7 of nine billion dollars for the 2009-2011 biennium during the 2009  
8 legislative session, it faces yet again in the 2011 legislative  
9 session, only two years later, another projected revenue shortfall of  
10 at least two billion six hundred million, for a total projected revenue  
11 shortfall of eleven billion six hundred million dollars in the 2009-  
12 2011 biennium. Many of the programs that were cut by the 2009 and 2010  
13 legislative sessions and that are under the threat of cuts during the  
14 2011 legislative session, due to the current economic recession and the  
15 fundamental inadequacies and unfairness of our current revenue  
16 structure, threaten the health, safety, and security of a civilized  
17 Washington state. Some examples of these cuts are: Dropping forty  
18 thousand people off the Washington basic health plan; cutting early  
19 childhood education for one thousand five hundred three-year-olds;

1 cutting all-day kindergarten for children living in poverty; cutting  
2 assistance for thirty thousand disabled and unemployable persons;  
3 cutting prescription drug assistance for eighty-five thousand seniors;  
4 cutting maternity support for fifty thousand high-risk pregnant women;  
5 cutting terminal care hospices for two thousand six hundred people;  
6 cutting children's health care for sixteen thousand low-income kids;  
7 making tuition costs out of reach for average income students; cutting  
8 medicaid medical care; and cutting services for mental health care,  
9 chemical dependency, home care, child care, public health, foster care,  
10 tobacco use prevention, cancer screening, nursing home care, supporting  
11 people with developmental disabilities, home visiting, universal  
12 vaccinations, hospital care, affordable housing, adult day health, and  
13 family planning, among many others.

14 (2) The legislature further finds that the federal stimulus money  
15 and accounting procedures used to balance the 2009-2011 budget will  
16 most probably not be available to mitigate any projected revenue  
17 shortfall in the 2011-2013 budget. Therefore, it is in the best  
18 interests of the people of Washington state to mitigate the devastating  
19 effects of the aforementioned cuts by looking at new ways to raise  
20 revenue for the short term, and to look at long-term solutions to the  
21 state's revenue problems. This can be done while at the same time  
22 securing fairness, adequacy, and stability within our state revenue  
23 structure.

24 (3) It is the legislature's intent with this act to move the state  
25 forward with two goals: (a) Raising immediate revenue to mitigate the  
26 cruel impacts of draconian budget cuts; and (b) initiating inquiry and  
27 proceedings toward long-term solutions to the state's unfair,  
28 inadequate, and volatile revenue problems. These goals allow all the  
29 people of the state to: Collectively share the financial  
30 responsibilities of this recession so that everyone is pitching in to  
31 get us all through the recession together; ensure that we leave no one  
32 behind; and position our state for recovery by reforming our revenue  
33 structure to encourage healthy economic development.

34 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
35 requires otherwise, the definitions in this section apply throughout  
36 this title. Except as provided in this section, any term used in this

1 title has the same meaning as when used in a comparable context in the  
2 internal revenue code.

3 (1) "Affiliated corporation" means a corporation that is a member  
4 of a group of two or more corporations with a common owner or owners,  
5 either corporate or noncorporate, when more than fifty percent of the  
6 voting stock of each member corporation is directly or indirectly owned  
7 by the common owner or owners or by one or more of the member  
8 corporations.

9 (2) "Business activity" means any activity engaged in with the  
10 object of gain, benefit, or advantage to the taxpayer or to another  
11 person or class, directly or indirectly.

12 (3) "Corporation" means any corporation as defined by the laws of  
13 this state or organization of any kind treated as a corporation for tax  
14 purposes under the laws of this state, wherever located, which if it  
15 were doing business in this state would be a taxpayer. The business  
16 conducted by a partnership which is directly or indirectly held by a  
17 corporation is considered the business of the corporation to the extent  
18 of the corporation's distributive share of the partnership income,  
19 inclusive of guaranteed payments to the extent prescribed by rule.

20 (4) "Combined group" means the group of all persons whose income  
21 and apportionment factors are required to be taken into account under  
22 section 9 (1) or (2) of this act in determining the taxpayer's share of  
23 the net business income or loss apportionable to this state.

24 (5) "Department" means the department of revenue.

25 (6) "Gasoline price" means the average of the retail gasoline  
26 prices published during the taxable year for the west coast less  
27 California, as published by the federal energy information  
28 administration or its successor agency.

29 (7) "Internal revenue code" means Title 26 of the United States  
30 Code of 1986, and amendments thereto, as existing on January 1, 2011.

31 (8) "Person" means any individual, firm, partnership, general  
32 partner of a partnership, limited liability company, registered limited  
33 liability partnership, foreign limited liability partnership,  
34 association, corporation (whether or not the corporation is, or would  
35 be if doing business in this state, subject to tax under this title),  
36 company, syndicate, estate, trust, business trust, trustee, trustee in  
37 bankruptcy, receiver, executor, administrator, assignee, or  
38 organization of any kind.

1 (9) "Partnership" means a general or limited partnership, or  
2 organization of any kind treated as a partnership for business purposes  
3 under the laws of this state.

4 (10) "Petroleum business" means a corporation engaged in any of the  
5 following activities: Exploration, production, refining,  
6 manufacturing, processing, transportation, and marketing of oil and gas  
7 or any commodity, product, or feedstock derived from oil or gas,  
8 including petrochemicals.

9 (11) "Petroleum refining" means refining crude petroleum into  
10 refined petroleum by fractionation, straight distillation of crude oil,  
11 cracking, or similar methods.

12 (12) "Tax haven" means a jurisdiction that, during the tax year in  
13 question:

14 (a) Is identified by the organization for economic cooperation and  
15 development (OECD) as a tax haven or as having a harmful preferential  
16 tax regime; or

17 (b) Exhibits the following characteristics established by the OECD  
18 in its 1998 report entitled harmful tax competition: An emerging  
19 global issue as indicative of a tax haven or as a jurisdiction having  
20 a harmful preferential tax regime, regardless of whether it is listed  
21 by the OECD as an uncooperative tax haven:

22 (i) Has no or nominal effective tax on the relevant income; and

23 (ii)(A) Has laws or practices that prevent effective exchange of  
24 information for tax purposes with other governments on taxpayers  
25 benefiting from the tax regime;

26 (B) Has tax regime which lacks transparency. A tax regime lacks  
27 transparency if the details of legislative, legal, or administrative  
28 provisions are not open and apparent or are not consistently applied  
29 among similarly situated taxpayers, or if the information needed by tax  
30 authorities to determine a taxpayer's correct tax liability, such as  
31 accounting records and underlying documentation, is not adequately  
32 available;

33 (C) Facilitates the establishment of foreign-owned entities without  
34 the need for a local substantive presence or prohibits these entities  
35 from having any commercial impact on the local economy;

36 (D) Explicitly or implicitly excludes the jurisdiction's resident  
37 taxpayers from taking advantage of the tax regime's benefits or

1 prohibits enterprises that benefit from the regime from operating in  
2 the jurisdiction's domestic market; or

3 (E) Has created a tax regime which is favorable for tax avoidance,  
4 based upon an overall assessment of relevant factors, including whether  
5 the jurisdiction has a significant untaxed offshore financial/other  
6 services sector relative to its overall economy.

7 (13) "Taxable income" means federal taxable income after making the  
8 additions, subtractions, apportionments, and allocations provided under  
9 this title.

10 (14) "Taxable year" means the taxpayer's taxable year as defined  
11 under the internal revenue code.

12 (15) "Taxpayer" means a corporation receiving income subject to tax  
13 under this title.

14 (16) "Unitary business" means a single economic enterprise that is  
15 made up either of separate parts of a single business entity or of a  
16 commonly controlled group of business entities that are sufficiently  
17 interdependent, integrated, and interrelated through their activities  
18 so as to provide a synergy and mutual benefit that produces a sharing  
19 or exchange of value among them and a significant flow of value to the  
20 separate parts. Any business conducted by a partnership must be  
21 treated as conducted by its partners, whether directly held or  
22 indirectly held through a series of partnerships, to the extent of the  
23 partner's distributive share of the partnership's income, regardless of  
24 the percentage of the partner's ownership interest or its distributive  
25 or any other share of partnership income. A business conducted  
26 directly or indirectly by one corporation is unitary with that portion  
27 of a business conducted by another corporation through its direct or  
28 indirect interest in a partnership if the conditions under this  
29 subsection are satisfied.

30 (17) "United States" means the fifty states of the United States,  
31 the District of Columbia, and United States' territories and  
32 possessions.

33 NEW SECTION. **Sec. 3.** PRIVILEGE TAX IMPOSED. A tax is imposed for  
34 each taxable year on the taxable income of each petroleum business for  
35 the privilege of engaging in any business activity within this state.  
36 The tax is equal to the taxable income multiplied by the rate according  
37 to the following table.

1		
2	If the gasoline price is:	The tax rate is:
3	Less than \$1.75	zero
4	Equal to or greater than \$1.75, but less than \$1.85	10%
5	Equal to or greater than \$1.85, but less than \$1.95	12%
6	Equal to or greater than \$1.95, but less than \$2.05	14%
7	Equal to or greater than \$2.05, but less than \$2.15	16%
8	Equal to or greater than \$2.15, but less than \$2.25	18%
9	Equal to or greater than \$2.25, but less than \$2.35	20%
10	Equal to or greater than \$2.35, but less than \$2.45	22%
11	Equal to or greater than \$2.45, but less than \$2.55	24%
12	Equal to or greater than \$2.55, but less than \$2.65	26%
13	Equal to or greater than \$2.65, but less than \$2.75	28%
14	Equal to or greater than \$2.75	30%

15        NEW SECTION.    **Sec. 4.**    EXEMPTION.    The tax imposed under this title  
16 does not apply to a corporation if neither the corporation nor any  
17 affiliated corporation engages in any petroleum refining within or  
18 outside this state during the taxable year or the five preceding years.

19        NEW SECTION.    **Sec. 5.**    TAXABLE INCOME MODIFICATIONS.    In computing  
20 taxable income, modifications must be made to the taxpayer's federal  
21 taxable income as required under this section, unless the modification  
22 has the effect of duplicating an item of income or deduction.

23        (1) Add amounts that have been deducted in computing federal  
24 taxable income to the extent the amounts have been carried over from  
25 taxable years ending before the effective date of this section.

26        (2) Add amounts that have been deducted in computing federal  
27 taxable income to the extent the amounts have been carried back from  
28 future taxable years.

29        (3) Add taxes on or measured by net income that have been deducted  
30 under the internal revenue code in computing federal taxable income.

31        (4) Add gross income that has been excluded under section 103 of  
32 the internal revenue code in computing federal taxable income, except  
33 gross income derived from obligations of the state of Washington or  
34 political subdivisions of the state of Washington. However, the amount  
35 added under this subsection must be reduced by any expenses incurred in

1 the production of amounts added under this subsection, to the extent  
2 the expenses have not been deducted in computing federal taxable  
3 income.

4 (5) Deduct gross income that the state is prohibited from taxing  
5 under the Constitution or laws of the United States, to the extent the  
6 gross income was included in computing federal taxable income.  
7 However, the amount deducted under this subsection must be reduced by  
8 any expenses incurred in the production of amounts subtracted under  
9 this subsection, to the extent the expenses have been deducted in  
10 computing federal taxable income.

11 (6) Deduct income attributable to activities subject to tax under  
12 chapter 82.04 RCW for periods prior to the effective date of this  
13 section, to the extent the gross income was included in computing  
14 federal taxable income. However, the amount deducted under this  
15 subsection must be reduced by any expenses incurred in the production  
16 of such income, to the extent the expenses have been deducted in  
17 computing federal taxable income.

18 (7) Deduct income attributable to activities subject to tax under  
19 chapter 82.16 RCW, to the extent the gross income was included in  
20 computing federal taxable income. However, the amount deducted under  
21 this subsection must be reduced by any expenses incurred in the  
22 production of such income to the extent the expenses have been deducted  
23 in calculating federal taxable income.

24 (8) Deduct income attributable to insurance business upon which a  
25 tax based on gross premiums is paid to the state. However, the amount  
26 deducted under this subsection must be reduced by any expense incurred  
27 in the production of such income to the extent the expense has been  
28 deducted in calculating federal taxable income.

29 (9) Add amounts upon which an S corporation is subject to tax under  
30 subchapter S, chapter 1, subtitle A of the internal revenue code.

31 (10) Add amounts that have been deducted as intangible drilling and  
32 development expenses under Sec. 263(c) of the internal revenue code in  
33 excess of amounts that would have been deducted had the expenses been  
34 capitalized and depreciated.

35 (11) Add amounts deducted on the percentage depletion basis under  
36 Sec. 613 of the internal revenue code in excess of the amounts that  
37 would have been deducted had the expenses been determined using the  
38 cost depletion basis under Sec. 612 of the internal revenue code.

1 (12) Add amounts deducted as depreciation in excess of the amounts  
2 allowable under Sec. 167 of the internal revenue code as that section  
3 read on June 30, 1981.

4 NEW SECTION. **Sec. 6.** TAX RETURNS FOR FRACTIONAL YEAR. If the  
5 first taxable year of any taxpayer with respect to which a tax is  
6 imposed by this title ends before December 31st of the calendar year in  
7 which this title becomes effective, referred to in this section as a  
8 fractional taxable year, the taxable income for the fractional taxable  
9 year is the taxpayer's taxable income for the entire taxable year,  
10 adjusted by one of the following methods, at the taxpayer's election:

11 (1) The taxable income must be multiplied by a fraction. The  
12 numerator of the fraction is the number of days in the fractional  
13 taxable year. The denominator of the fraction is the number of days in  
14 the entire taxable year.

15 (2) The taxable income must be adjusted, in accordance with rules  
16 of the department, so as to include only such income and be reduced  
17 only by such deductions as can be clearly determined from the permanent  
18 records of the taxpayer to be attributable to the fractional taxable  
19 year.

20 NEW SECTION. **Sec. 7.** ESTIMATION AGREEMENTS. The department may  
21 reasonably estimate the items of business or nonbusiness income of a  
22 taxpayer having an office within the state and one or more other states  
23 or foreign countries that may be apportioned or allocated to the state  
24 and may enter into estimation agreements with such taxpayers for the  
25 determination of their liability for the tax imposed by this title.

26 NEW SECTION. **Sec. 8.** APPORTIONMENT AND ALLOCATION OF INCOME. All  
27 income must be apportioned and allocated to this state except income  
28 that is apportioned or allocated to another state under RCW 82.56.010.

29 NEW SECTION. **Sec. 9.** COMBINED REPORTING. (1) A taxpayer engaged  
30 in a unitary business with one or more other corporations must file a  
31 combined report which includes the income, determined under section 10  
32 of this act, and apportionment factors, determined under RCW 82.56.010,  
33 of all corporations that are members of the unitary business, and such  
34 other information as required by the department.

1 (2) The department may, by rule, require the combined report to  
2 include the income and associated apportionment factors of any persons  
3 that are not included under subsection (1) of this section, but that  
4 are members of a unitary business, in order to reflect proper  
5 apportionment of income of entire unitary businesses. Authority to  
6 require combination by rule under this subsection includes authority to  
7 require combination of persons that are not, or would not be if doing  
8 business in this state, subject to tax under this chapter.

9 (a) In addition, if the department determines that the reported  
10 income or loss of a taxpayer engaged in a unitary business with any  
11 person not included under subsection (1) of this section represents an  
12 avoidance or evasion of tax by such taxpayer, the department may, on a  
13 case-by-case basis, require all or any part of the income and  
14 associated apportionment factors of such person to be included in the  
15 taxpayer's combined report.

16 (b) With respect to inclusion of associated apportionment factors  
17 under this subsection, the department may require the exclusion of any  
18 one or more of the factors, the inclusion of one or more additional  
19 factors which will fairly represent the taxpayer's business activity in  
20 this state, or the employment of any other method to effectuate a  
21 proper reflection of the total amount of income subject to  
22 apportionment and an equitable allocation and apportionment of the  
23 taxpayer's income.

24 NEW SECTION. **Sec. 10.** DETERMINATION OF TAXABLE INCOME OR LOSS  
25 USING COMBINED REPORT. The use of a combined report does not disregard  
26 the separate identities of the taxpayer members of the combined group.  
27 Each taxpayer member is responsible for tax based on its taxable income  
28 or loss apportioned or allocated to this state, which includes, in  
29 addition to other types of income, the taxpayer member's apportioned  
30 share of business income of the combined group, where business income  
31 of the combined group is calculated as a summation of the individual  
32 net business incomes of all members of the combined group. A member's  
33 net business income is determined by removing all but business income,  
34 expense, and loss from that member's total income of the combined  
35 group, as provided in this section.

36 (1)(a) Each taxpayer member is responsible for tax based on its

1 taxable income or loss apportioned or allocated to this state, which  
2 includes:

3 (i) Its share of any business income apportionable to this state of  
4 each of the combined groups of which it is a member, determined under  
5 subsection (2) of this section;

6 (ii) Its share of any business income apportionable to this state  
7 of a distinct business activity conducted within and without the state  
8 wholly by the taxpayer member, determined under RCW 82.56.010;

9 (iii) Its income from a business conducted wholly by the taxpayer  
10 member entirely within the state;

11 (iv) Its income sourced to this state from the sale or exchange of  
12 capital or assets, and from involuntary conversions, as determined  
13 under subsection (3)(a)(vii) of this section, below;

14 (v) Its nonbusiness income or loss allocable to this state,  
15 determined under RCW 82.56.010;

16 (vi) Its income or loss allocated or apportioned in an earlier  
17 year, required to be taken into account as state source income during  
18 the income year, other than a net operating loss; and

19 (vii) Its net operating loss carryover or carryback. If the  
20 taxable income computed under this section results in a loss for a  
21 taxpayer member of the combined group, that taxpayer member has a state  
22 net operating loss. Such net operating loss is applied as a deduction  
23 in a prior or subsequent year only if that taxpayer has state source  
24 positive net income, whether or not the taxpayer is or was a member of  
25 a combined reporting group in the prior or subsequent year.

26 (b) Except where otherwise provided, no tax credit or  
27 post-apportionment deduction earned by one member of the group, but not  
28 fully used by or allowed to that member, may be used in whole or in  
29 part by another member of the group or applied in whole or in part  
30 against the total income of the combined group; and a  
31 post-apportionment deduction carried over into a subsequent year as to  
32 the member that incurred it, and available as a deduction to that  
33 member in a subsequent year, will be considered in the computation of  
34 the income of that member in the subsequent year, regardless of the  
35 composition of that income as apportioned, allocated, or wholly within  
36 this state.

37 (2) The taxpayer's share of the business income apportionable to

1 this state of each combined group of which it is a member is the  
2 product of:

3 (a) The business income of the combined group, determined under  
4 subsection (3) of this section; and

5 (b) The taxpayer member's apportionment percentage, determined  
6 under RCW 82.56.010, including in the property, payroll, and sales  
7 factor numerators the taxpayer's property, payroll, and sales,  
8 respectively, associated with the combined group's unitary business in  
9 this state, and including in the denominator the property, payroll, and  
10 sales of all members of the combined group, including the taxpayer,  
11 which property, payroll, and sales are associated with the combined  
12 group's unitary business wherever located. The property, payroll, and  
13 sales of a partnership must be included in the determination of the  
14 partner's apportionment percentage in proportion to a ratio the  
15 numerator of which is the amount of the partner's distributive share of  
16 partnership's unitary income included in the income of the combined  
17 group in accordance with subsection (3)(b)(iii) of this section and the  
18 denominator of which is the amount of the partnership's total unitary  
19 income.

20 (3) The business income of a combined group is determined as  
21 follows:

22 (a) From the total income of the combined group, determined under  
23 (b) of this subsection, subtract any income, and add any expense or  
24 loss, other than the business income, expense, or loss of the combined  
25 group.

26 (b) Except as otherwise provided, the total income of the combined  
27 group is the sum of the incomes, separately determined, of each member  
28 of the combined group. The income of each member of the combined group  
29 must be determined as follows:

30 (i) For any member incorporated in the United States, or included  
31 in a consolidated federal corporate income tax return, the income to be  
32 included in the total income of the combined group is the taxable  
33 income for the corporation after making appropriate adjustments under  
34 section 5 of this act.

35 (ii)(A) For any member not included in (a) of this subsection, the  
36 income to be included in the total income of the combined group must be  
37 determined as follows:

1 (I) A profit and loss statement must be prepared for each foreign  
2 branch or corporation in the currency in which the books of account of  
3 the branch or corporation are regularly maintained.

4 (II) Adjustments must be made to the profit and loss statement to  
5 conform it to the accounting principles generally accepted in the  
6 United States for the preparation of such statements except as modified  
7 under this title.

8 (III) Adjustments must be made to the profit and loss statement to  
9 conform it to the tax accounting standards required by the department  
10 by rule.

11 (IV) Except as otherwise provided by rule, the profit and loss  
12 statement of each member of the combined group, and the apportionment  
13 factors related thereto, whether United States or foreign, must be  
14 translated into the currency in which the parent company maintains its  
15 books and records.

16 (V) Income apportioned to this state must be expressed in United  
17 States dollars.

18 (B) In lieu of the procedures set forth in (b)(ii)(A) of this  
19 subsection, and subject to the determination of the department that it  
20 reasonably approximates income, any member not included in (b)(i) of  
21 this subsection may determine its income on the basis of the  
22 consolidated profit and loss statement which includes the member and  
23 which is prepared for filing with the securities and exchange  
24 commission by related corporations. If the member is not required to  
25 file with the securities and exchange commission, the department may  
26 allow the use of the consolidated profit and loss statement prepared  
27 for reporting to shareholders and subject to review by an independent  
28 auditor. If above statements do not reasonably approximate income as  
29 determined by the department, the department may accept those  
30 statements with appropriate adjustments to approximate that income.

31 (iii) If a unitary business includes income from a partnership, the  
32 income to be included in the total income of the combined group must be  
33 the member of the combined group's direct and indirect distributive  
34 share of the partnership's unitary business income.

35 (iv) All dividends paid by one to another of the members of the  
36 combined group must, to the extent those dividends are paid out of the  
37 earnings and profits of the unitary business included in the combined  
38 report, in the current or an earlier year, be eliminated from the

1 income of the recipient. This provision does not apply to dividends  
2 received from members of the unitary business which are not a part of  
3 the combined group.

4 (v) Except as otherwise provided by rule, business income from an  
5 intercompany transaction between members of the same combined group  
6 must be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the  
7 occurrence of any of the following events, deferred business income  
8 resulting from an intercompany transaction between members of a  
9 combined group must be restored to the income of the seller, and is  
10 apportioned as business income earned immediately before the event:

11 (A) The object of a deferred intercompany transaction is:

12 (I) Resold by the buyer to an entity that is not a member of the  
13 combined group;

14 (II) Resold by the buyer to an entity that is a member of the  
15 combined group for use outside the unitary business in which the buyer  
16 and seller are engaged; or

17 (III) Converted by the buyer to a use outside the unitary business  
18 in which the buyer and seller are engaged; or

19 (B) The buyer and seller are no longer members of the same combined  
20 group, regardless of whether the members remain unitary.

21 (vi) A charitable expense incurred by a member of a combined group  
22 must, to the extent allowable as a deduction under internal revenue  
23 code section 170, be subtracted first from the business income of the  
24 combined group (subject to the income limitations of that section  
25 applied to the entire business income of the group), and any remaining  
26 amount must then be treated as a nonbusiness expense allocable to the  
27 member that incurred the expense (subject to the income limitations of  
28 that section applied to the nonbusiness income of that specific  
29 member). Any charitable deduction disallowed under the foregoing rule,  
30 but allowed as a carryover deduction in a subsequent year, must be  
31 treated as originally incurred in the subsequent year by the same  
32 member, and the rules of this section apply in the subsequent year in  
33 determining the allowable deduction in that year.

34 (vii) Gain or loss from the sale or exchange of capital assets,  
35 property described by internal revenue code section 1231(a)(3), and  
36 property subject to an involuntary conversion, must be removed from the  
37 total separate net income of each member of a combined group and must  
38 be apportioned and allocated as follows:

1 (A) For each class of gain or loss (short-term capital, long-term  
2 capital, internal revenue code section 1231, and involuntary  
3 conversions) all members' business gain and loss for the class must be  
4 combined (without netting between such classes), and each class of net  
5 business gain or loss separately apportioned to each member using the  
6 member's apportionment percentage determined under subsection (2) of  
7 this section.

8 (B) Each taxpayer member must then net its apportioned business  
9 gain or loss for all classes, including any such apportioned business  
10 gain and loss from other combined groups, against the taxpayer member's  
11 nonbusiness gain and loss for all classes allocated to this state,  
12 using the rules of internal revenue code sections 1231 and 1222,  
13 without regard to any of the taxpayer member's gains or losses from the  
14 sale or exchange of capital assets, internal revenue code section 1231  
15 property, and involuntary conversions which are nonbusiness items  
16 allocated to another state.

17 (C) Any resulting state source income (or loss, if the loss is not  
18 subject to the limitations of internal revenue code section 1211) of a  
19 taxpayer member produced by the application of this section must then  
20 be applied to all other state source income or loss of that member.

21 (D) Any resulting state source loss of a member that is subject to  
22 the limitations of internal revenue code section 1211 must be carried  
23 forward by that member, and must be treated as state source short-term  
24 capital loss incurred by that member for the year for which the  
25 carryover applies.

26 (viii) Any expense of one member of the unitary group which is  
27 directly or indirectly attributable to the nonbusiness or exempt income  
28 of another member of the unitary group must be allocated to that other  
29 member as corresponding nonbusiness or exempt expense, as appropriate.

30 NEW SECTION. **Sec. 11.** DESIGNATION OF SURETY. As a filing  
31 convenience, and without changing the respective liability of the group  
32 members, members of a combined reporting group may annually elect to  
33 designate one taxpayer member of the combined group to file a single  
34 return in the form and manner prescribed by the department, in lieu of  
35 filing their own respective returns, provided that the taxpayer  
36 designated to file the single return consents to act as surety with  
37 respect to the tax liability of all other taxpayers properly included

1 in the combined report, and agrees to act as agent on behalf of those  
2 taxpayers for the year of the election for tax matters relating to the  
3 combined report for that year. If for any reason the surety is  
4 unwilling or unable to perform its responsibilities, tax liability may  
5 be assessed against the taxpayer members.

6 NEW SECTION. **Sec. 12.** WATER'S-EDGE ELECTION; INITIATION AND  
7 WITHDRAWAL. (1) Taxpayer members of a unitary group that meet the  
8 requirements of subsection (2) of this section may elect to determine  
9 each of their apportioned shares of the net business income or loss of  
10 the combined group under a water's-edge election. Under this election,  
11 taxpayer members must take into account all or a portion of the income  
12 and apportionment factors of only the following members otherwise  
13 included in the combined group under section 9 of this act, as follows:

14 (a) The entire income and apportionment factors of any member  
15 incorporated in the United States or formed under the laws of any  
16 state, the District of Columbia, or any territory or possession of the  
17 United States;

18 (b) The entire income and apportionment factors of any member,  
19 regardless of the place incorporated or formed, if the average of its  
20 property, payroll, and sales factors within the United States is twenty  
21 percent or more;

22 (c) The entire income and apportionment factors of any member which  
23 is a domestic international sales corporation as described in internal  
24 revenue code sections 991 to 994, inclusive; a foreign sales  
25 corporation as described in internal revenue code sections 921 to 927,  
26 inclusive; or any member which is an export trade corporation, as  
27 described in internal revenue code sections 970 to 971, inclusive;

28 (d) Any member not described in (a) through (c) of this subsection,  
29 inclusive, must include the portion of its income derived from or  
30 attributable to sources within the United States, as determined under  
31 the internal revenue code without regard to federal treaties, and its  
32 apportionment factors related thereto;

33 (e) Any member that is a "controlled foreign corporation," as  
34 defined in internal revenue code section 957, to the extent of the  
35 income of that member that is defined in section 952 of subpart F of  
36 the internal revenue code ("subpart F income") not excluding lower-tier  
37 subsidiaries' distributions of such income which were previously taxed,

1 determined without regard to federal treaties, and the apportionment  
2 factors related to that income; any item of income received by a  
3 controlled foreign corporation is excluded if such income was subject  
4 to an effective rate of income tax imposed by a foreign country greater  
5 than ninety percent of the maximum rate of tax specified in internal  
6 revenue code section 11;

7 (f) Any member that earns more than twenty percent of its income,  
8 directly or indirectly, from intangible property or service related  
9 activities that are deductible against the business income of other  
10 members of the combined group, to the extent of that income and the  
11 apportionment factors related thereto; and

12 (g) The entire income and apportionment factors of any member that  
13 is doing business in a tax haven, where "doing business in a tax haven"  
14 is defined as being engaged in activity sufficient for that tax haven  
15 jurisdiction to impose a tax under United States constitutional  
16 standards. If the member's business activity within a tax haven is  
17 entirely outside the scope of the laws, provisions, and practices that  
18 cause the jurisdiction to meet the criteria established in section  
19 2(12) of this act, the activity of the member must be treated as not  
20 having been conducted in a tax haven.

21 (2)(a) A water's-edge election is effective only if made on a  
22 timely filed, original return for a taxable year by every member of the  
23 unitary business subject to tax under this title. The department must  
24 develop rules, and rules governing the impact if any, on the scope or  
25 application of a water's-edge election, including termination or deemed  
26 election, resulting from a change in the composition of the unitary  
27 group, the combined group, the taxpayer members, and any other similar  
28 change.

29 (b) Such election constitutes consent to the reasonable production  
30 of documents and taking of depositions.

31 (c) In the discretion of the department, a water's-edge election  
32 may be disregarded in part or in whole, and the income and  
33 apportionment factors of any member of the taxpayer's unitary group may  
34 be included in the combined report without regard to the provisions of  
35 this section, if any member of the unitary group fails to comply with  
36 any provision of this title or if a person otherwise not included in  
37 the water's-edge combined group was availed of with a substantial  
38 objective of avoiding state income tax.

1 (d) A water's-edge election is binding for and applicable to the  
2 tax year it is made and all taxable years thereafter. It may be  
3 withdrawn or reinstated after withdrawal, only upon written request  
4 for reasonable cause based on extraordinary hardship due to unforeseen  
5 changes in state tax statutes, law, or policy, and only with the  
6 written permission of the department. If the department grants a  
7 withdrawal of election, he or she must impose reasonable conditions as  
8 necessary to prevent the evasion of tax or to clearly reflect income  
9 for the election period prior to or after the withdrawal.

10 NEW SECTION. **Sec. 13.** ESTIMATED TAX IMPOSED--DUE DATE OF  
11 ESTIMATED TAXES--AMOUNT OF ESTIMATED TAX--UNDERPAYMENT PENALTY. (1)  
12 Each taxpayer who is required by the internal revenue code to make  
13 payment of estimated taxes must pay to the department on forms  
14 prescribed by the department the estimated taxes due under this title.

15 (2) The provisions of the internal revenue code relating to the  
16 determination of reporting periods and due dates of payments of  
17 estimated tax apply to the estimated tax payments due under this  
18 section.

19 (3) The amount of the estimated tax is the annualized tax divided  
20 by the number of months in the reporting period. No estimated tax is  
21 due if the annualized tax is less than five hundred dollars. The  
22 provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of  
23 estimated tax but do not apply to underpayments if the tax remitted to  
24 the department under this title is either ninety percent of the tax  
25 shown on the return or one hundred percent of the tax shown on the  
26 previous year's tax return.

27 (4) For purposes of this section, the annualized tax is the  
28 taxpayer's projected tax liability for the taxable year as computed  
29 under section 6654 of the internal revenue code and the regulations  
30 thereunder.

31 NEW SECTION. **Sec. 14.** METHOD OF ACCOUNTING. (1) A taxpayer's  
32 method of accounting for purposes of the tax imposed under this title  
33 must be the same as the taxpayer's method of accounting for federal  
34 income tax purposes. If no method of accounting has been regularly  
35 used by a taxpayer for federal income tax purposes or if the method

1 used does not clearly reflect income, tax due under this title is  
2 computed by a method of accounting that in the opinion of the  
3 department fairly reflects income.

4 (2) If a corporation's method of accounting is changed for federal  
5 income tax purposes, it must be similarly changed for purposes of this  
6 title.

7 NEW SECTION. **Sec. 15.** CORPORATIONS REQUIRED TO FILE RETURNS. (1)  
8 All taxpayers must file with the department, on forms prescribed by the  
9 department, an income tax return for each taxable year. A corporation  
10 owing no tax for a taxable year is not required to file a return for  
11 that year. Each corporation required to file a return under this title  
12 must, without assessment, notice, or demand, pay any tax due thereon to  
13 the department on or before the date fixed for the filing of the  
14 return.

15 (2) The department may by rule require that certain taxpayers file,  
16 on forms prescribed by the department, informational returns for any  
17 period.

18 (3) If an adjustment to a taxpayer's federal return is made by the  
19 taxpayer or the internal revenue service, the taxpayer must, within  
20 ninety days of the final determination of the adjustment by the  
21 internal revenue service or within thirty days of the filing of a  
22 federal return adjusted by the taxpayer, file with the department on  
23 forms prescribed by the department, a corrected return reflecting the  
24 adjustments as finally determined. The taxpayer must pay any  
25 additional tax due resulting from the finally determined internal  
26 revenue service adjustment or a taxpayer adjustment without notice and  
27 assessment. The period of limitation for the collection of the  
28 additional tax, interest, and penalty due as a result of an adjustment  
29 by the taxpayer or a finally determined internal revenue service  
30 adjustment must begin at the later of thirty days following the final  
31 determination of the adjustment or the date of the filing of the  
32 corrected return.

33 NEW SECTION. **Sec. 16.** DUE DATE FOR FILING A RETURN--EXTENSIONS--  
34 INTEREST AND PENALTIES. The due date of a return required to be filed  
35 with the department is the due date of the federal income tax return or  
36 informational return for federal income tax purposes. The department

1 has the authority to grant extensions of times by which returns  
2 required to be filed by this title may be submitted. The department  
3 also has the authority to grant extensions of time to pay tax with  
4 regard to taxes imposed by this title. Interest at the rate as  
5 specified in RCW 82.32.050 accrues during any extension period and the  
6 interest and penalty provisions of chapter 82.32 RCW apply to late  
7 payments and deficiencies. Notwithstanding the limitation of RCW  
8 82.32.090, in the case of the late filing of an informational return,  
9 there is imposed a penalty the amount of which must be established by  
10 the department by rule. The penalty may not exceed fifty dollars per  
11 month for a maximum of ten months. RCW 82.32.105 applies to this  
12 section.

13 NEW SECTION. **Sec. 17.** RECORDS--RETURNS. (1) Every taxpayer  
14 required to deduct and withhold the tax imposed under this title must  
15 keep records, render statements, make returns, file reports, and  
16 perform other acts as the department requires by rule. Each return is  
17 made under penalty of perjury and on forms prescribed by the  
18 department. The department may require other statements and reports be  
19 made under penalty of perjury and on forms prescribed by the  
20 department. The department may require any taxpayer required to deduct  
21 and withhold the tax imposed under this title to furnish to the  
22 department a correct copy of any return or document that the taxpayer  
23 has filed with the internal revenue service or received from the  
24 internal revenue service.

25 (2) All books and records and other papers and documents required  
26 to be kept under this title are subject to inspection by the department  
27 at all times during business hours of the day.

28 NEW SECTION. **Sec. 18.** PROVISIONS OF INTERNAL REVENUE CODE  
29 CONTROL. (1) To the extent possible without being inconsistent with  
30 this title, all of the provisions of the internal revenue code relating  
31 to the following subjects apply to the taxes imposed under this title:

32 (a) Liability of transferees;

33 (b) Time and manner of making returns, extensions of time for  
34 filing returns, verification of returns, and the time when a return is  
35 deemed filed.

1 (2) The department by rule may provide modifications and exceptions  
2 to the provisions in subsection (1) of this section, if reasonably  
3 necessary to facilitate the prompt, efficient, and equitable collection  
4 of tax under this title.

5 NEW SECTION. **Sec. 19.** ADMINISTRATIVE PROVISIONS. Chapter 82.32  
6 RCW applies to the taxes imposed in this chapter.

7 NEW SECTION. **Sec. 20.** RULES. The department may adopt rules  
8 under chapter 34.05 RCW for the administration and enforcement of this  
9 title. The rules, to the extent possible without being inconsistent  
10 with this title, must follow the internal revenue code and the  
11 regulations and rulings of the United States department of the treasury  
12 with respect to the federal income tax. The department may adopt as a  
13 part of these rules any portions of the internal revenue code and  
14 treasury department regulations and rulings, in whole or in part.

15 NEW SECTION. **Sec. 21.** CRIMES. (1) Any person who knowingly  
16 attempts to evade the tax imposed under this title or payment thereof  
17 is guilty of a class C felony as provided in chapter 9A.20 RCW.

18 (2) Any person required to collect tax imposed under this title who  
19 knowingly fails to collect, truthfully account for, or pay over the tax  
20 is guilty of a class C felony as provided in chapter 9A.20 RCW.

21 (3) Any person who knowingly fails to pay tax, pay estimated tax,  
22 make returns, keep records, or supply information, as required under  
23 this title, is guilty of a gross misdemeanor as provided in chapter  
24 9A.20 RCW.

25 NEW SECTION. **Sec. 22.** USE OF TAX RECEIPTS. All receipts from the  
26 tax imposed in this chapter must be deposited in equal amounts into the  
27 Washington investment trust established in section 4, chapter . . .  
28 (House Bill No. 1320), Laws of 2011 and the public works assistance  
29 account for the purposes of chapter . . . (House Bill No. 2040), Laws  
30 of 2011. However, if the Washington investment trust is not created,  
31 the portion of the receipts from the tax imposed under this chapter for  
32 the Washington investment trust must be deposited in the education  
33 legacy trust account to be used as follows:

- 1           (1) Thirty percent for early childhood education and wraparound  
2 services;  
3           (2) Thirty percent for postsecondary education programs;  
4           (3) Thirty percent for K-12 programs; and  
5           (4) Ten percent for youth development and mentoring programs.

6           NEW SECTION.   **Sec. 23.**   CODIFICATION.   Sections 1 through 22 of  
7 this act constitute a new title, to be codified as Title 82A RCW.

8           NEW SECTION.   **Sec. 24.**   SEVERABILITY CLAUSE.   If any provision of  
9 this act or its application to any person or circumstance is held  
10 invalid, the remainder of the act or the application of the provision  
11 to other persons or circumstances is not affected.

12           NEW SECTION.   **Sec. 25.**   EFFECTIVE DATE.   This act takes effect  
13 January 1, 2012.

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