
HOUSE BILL 2150

State of Washington 64th Legislature 2015 Regular Session

By Representatives MacEwen, Smith, Walsh, Vick, Tharinger, Reykdal,
and Buys

Read first time 02/19/15. Referred to Committee on Finance.

1 AN ACT Relating to reforming the business and occupation tax to
2 provide fairness and administrative simplicity; amending RCW
3 82.04.050, 82.04.051, 82.04.062, 82.04.190, 82.04.2403, 82.04.255,
4 82.04.257, 82.04.261, 82.04.285, 82.04.286, 82.04.29001, 82.04.2907,
5 82.04.297, 82.04.334, 82.04.360, 82.04.4291, 82.04.4295, 82.04.4324,
6 82.04.433, 82.04.440, 82.04.460, 82.04.462, and 82.04.540; reenacting
7 and amending RCW 82.04.260; adding new sections to chapter 82.04 RCW;
8 repealing RCW 82.04.230, 82.04.240, 82.04.2404, 82.04.250, 82.04.263,
9 82.04.270, 82.04.272, 82.04.280, 82.04.290, 82.04.29002, 82.04.2905,
10 82.04.2906, 82.04.2908, 82.04.2909, 82.04.293, 82.04.294, 82.04.298,
11 82.04.426, 82.04.620, 82.04.4451, 82.04.44525, 82.04.447, 82.04.448,
12 82.04.4481, 82.04.4482, 82.04.4483, 82.04.4485, 82.04.4486,
13 82.04.4489, and 82.04.449; and providing an effective date.

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

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

17 (1) Upon every person engaging within this state primarily in the
18 business of: Manufacturing or processing for hire, extracting or
19 extracting for hire, selling at wholesale, selling at retail, or any
20 combination thereof; as to such persons the amount of the tax is
21 equal to the measure of the tax for all business activities engaged

1 in by the person, multiplied by the rate of 1.6 percent. The tax
2 under this subsection (1) is subject to the deduction allowed under
3 section 2 of this act and any other deductions, exemptions, or
4 credits otherwise allowable under this chapter.

5 (2)(a) Except as otherwise provided in this subsection, upon
6 every person engaging within this state primarily in any business
7 activity other than an activity described under subsection (1) of
8 this section; as to such persons the amount of tax is equal to the
9 measure of the tax for all activities engaged in by the person
10 multiplied by the rate of 3.75 percent, subject to the deduction
11 allowed under section 2 of this act and any other deductions,
12 exemptions, or credits otherwise allowable under this chapter.

13 (b) This subsection (2) includes, among others, and without
14 limiting the scope hereof (whether or not title to materials used in
15 the performance of such business passes to another by accession,
16 confusion, or other than by outright sale), persons engaged in the
17 business of rendering any type of service which does not constitute a
18 "sale at retail" or a "sale at wholesale." The value of advertising,
19 demonstration, and promotional supplies and materials furnished to an
20 agent by his or her principal or supplier to be used for
21 informational, educational, and promotional purposes is not
22 considered a part of the agent's remuneration or commission and is
23 not subject to taxation under this section.

24 (c) Credit intermediation services are subject to the rate in
25 subsection (1) of this section. Telecommunications services are
26 subject to a rate of 1.2 percent.

27 (3) A taxpayer must use the same tax rate for taxes due and
28 payable during the entire calendar year.

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

31 (a) "Credit intermediation services" means commercial banking,
32 sales financing, consumer lending, and all other activities related
33 to credit intermediation as described in the three digit North
34 American industry classification system code 522.

35 (b) "Measure of the tax" means:

36 (i) For manufacturing or processing for hire, the value of the
37 products, including by-products, manufactured by the business
38 regardless of the place of sale or the fact that deliveries may be
39 made to points outside the state.

1 (ii) For an extracting or extracting for hire, the value of the
2 products, including by-products, extracted by the business regardless
3 of the place of sale or the fact that deliveries may be made to
4 points outside the state.

5 (iii) For selling at retail or wholesale, the gross proceeds of
6 sales of the business.

7 (iv) For the rendition of services or any other apportionable
8 activity as defined in RCW 82.04.460, the gross income of the
9 business.

10 (c) "Primarily" means more than fifty percent.

11 (d) "Telecommunications service" has the meaning provided in RCW
12 82.04.065.

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

15 (1) In computing tax under this chapter, persons described under
16 section 1(1) of this act may deduct the greater of: Cost of goods
17 sold, compensation, thirty percent of the measure of the tax, or
18 forty-one thousand six hundred sixty-seven dollars for each month in
19 the reporting period, from the measure of the tax. The deduction
20 provided in this subsection is in addition to any other deductions
21 that may be available to the taxpayer.

22 (2) Persons described under section 1(2) of this act may deduct
23 the greater of: Compensation, thirty percent of the measure of the
24 tax, or forty-one thousand six hundred sixty-seven dollars for each
25 month in the reporting period, from the measure of the tax. The
26 deduction provided in this subsection is in addition to any other
27 deductions that may be available to the taxpayer.

28 (3) A person may not deduct compensation in excess of two hundred
29 thousand dollars for any employee in a calendar year.

30 (4)(a) The department must by rule provide a method of
31 apportioning compensation and cost of goods sold to Washington. For
32 apportionable activities, as defined in RCW 82.04.460, the rule
33 adopted by the department must provide for a single factor
34 apportionment based on a receipts factor and, to the extent feasible,
35 be consistent with the apportionment of income for apportionable
36 activities under RCW 82.04.460 and 82.04.462. For nonapportionable
37 activities, the apportionment of compensation and cost of goods sold
38 to Washington must be based on sales within Washington as a
39 percentage of sales made everywhere.

1 (b) If a person is primarily engaged in selling products
2 manufactured or extracted by the person, the person may apportion all
3 compensation to Washington for employees employed in Washington or
4 apportion all cost of goods sold to Washington with respect to
5 products manufactured in Washington.

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

8 (a) "Benefits" means the cost of all benefits, to the extent
9 deductible for federal income tax purposes, that it provides to its
10 officers, directors, owners, partners, and employees. The term
11 "benefits" includes employees' health savings accounts, health care
12 insurance, and retirement contributions.

13 (b) "Compensation" includes wages and benefits but not to exceed
14 two hundred thousand dollars per employee.

15 (c) "Cost of goods sold" means all direct costs of extracting,
16 manufacturing, or acquiring tangible personal property that are
17 properly reportable as cost of goods sold on the federal income tax
18 return. A person must determine its cost of goods sold in accordance
19 with the methods used on the federal income tax return.

20 (d) "Wages" means the amount entered in the medicare wages and
21 tips box of internal revenue service form W-2 or any subsequent form
22 with a different number or designation that substantially provides
23 the same information. The term also includes, to the extent not
24 included above:

25 (i) Net distributive income from a taxable entity treated as a
26 partnership for federal income tax purposes, but only if the person
27 receiving the distribution is a natural person;

28 (ii) Net distributive income from limited liability companies and
29 corporations treated as S corporations for federal income tax
30 purposes, but only if the person receiving the distribution is a
31 natural person;

32 (iii) Stock awards and stock options deducted for federal income
33 tax purposes; and

34 (iv) Net distributive income from a limited liability company
35 treated as a sole proprietorship for federal income tax purposes, but
36 only if the person receiving the distribution is a natural person.

37 NEW SECTION. **Sec. 3.** The following acts or parts of acts are
38 each repealed:

1 (1) RCW 82.04.230 (Tax upon extractors) and 2006 c 300 s 5, 1993
2 sp.s. c 25 s 101, 1971 ex.s. c 281 s 2, 1969 ex.s. c 262 s 33, 1967
3 ex.s. c 149 s 7, & 1961 c 15 s 82.04.230;

4 (2) RCW 82.04.240 (Tax on manufacturers) and 2010 c 114 s 104,
5 2004 c 24 s 4, 2003 c 149 s 3, 1998 c 312 s 3, 1993 sp.s. c 25 s 102,
6 1981 c 172 s 1, 1979 ex.s. c 196 s 1, 1971 ex.s. c 281 s 3, 1969
7 ex.s. c 262 s 34, 1967 ex.s. c 149 s 8, 1965 ex.s. c 173 s 5, & 1961
8 c 15 s 82.04.240;

9 (3) RCW 82.04.2404 (Manufacturers—Processors for hire—
10 Semiconductor materials) and 2010 c 114 s 105 & 2006 c 84 s 2;

11 (4) RCW 82.04.250 (Tax on retailers) and 2014 c 97 s 402, 2013
12 3rd sp.s. c 2 s 7, 2010 1st sp.s. c 23 s 509, 2010 1st sp.s. c 11 s
13 1, 2008 c 81 s 5, 2006 c 177 s 5, & 2003 2nd sp.s. c 1 s 2;

14 (5) RCW 82.04.263 (Tax on cleaning up radioactive waste and other
15 by-products of weapons production and nuclear research and
16 development) and 2009 c 469 s 202 & 1996 c 112 s 3;

17 (6) RCW 82.04.270 (Tax on wholesalers) and 2004 c 24 s 5, 2003
18 2nd sp.s. c 1 s 5, 2001 1st sp.s. c 9 s 3, & 1999 c 358 s 2;

19 (7) RCW 82.04.272 (Tax on warehousing and reselling prescription
20 drugs) and 2013 c 19 s 127, 2003 c 168 s 401, & 1998 c 343 s 1;

21 (8) RCW 82.04.280 (Tax on printers, publishers, highway
22 contractors, extracting or processing for hire, cold storage
23 warehouse or storage warehouse operation, insurance general agents,
24 radio and television broadcasting, government contractors—Cold
25 storage warehouse defined—Storage warehouse defined—Periodical or
26 magazine defined) and 2010 c 106 s 206, 2010 c 106 s 205, 2009 c 461
27 s 3, 2009 c 461 s 2, 2006 c 300 s 7, 2006 c 300 s 6, 2004 c 24 s 6,
28 2003 c 149 s 4, 1998 c 343 s 3, 1994 c 112 s 1, 1993 sp.s. c 25 s
29 303, 1993 sp.s. c 25 s 106, 1986 c 226 s 2, 1983 c 132 s 1, 1975 1st
30 ex.s. c 90 s 3, 1971 ex.s. c 299 s 5, 1971 ex.s. c 281 s 7, & 1970
31 ex.s. c 8 s 2;

32 (9) RCW 82.04.290 (Tax on international investment management
33 services or other business or service activities) and 2014 c 97 s
34 404, 2013 3rd sp.s. c 2 s 8, 2013 c 23 s 314, 2011 c 174 s 101, 2008
35 c 81 s 6, 2005 c 369 s 8, 2004 c 174 s 2, 2003 c 343 s 2, & 2001 1st
36 sp.s. c 9 s 6;

37 (10) RCW 82.04.29002 (Additional tax on certain business and
38 service activities) and 2010 1st sp.s. c 23 s 1101;

1 (11) RCW 82.04.2905 (Tax on providing day care) and 1998 c 312 s
2 7;

3 (12) RCW 82.04.2906 (Tax on certain chemical dependency services)
4 and 2003 c 343 s 1;

5 (13) RCW 82.04.2908 (Tax on provision of room and domiciliary
6 care to assisted living facility residents) and 2012 c 10 s 70, 2005
7 c 514 s 302, & 2004 c 174 s 1;

8 (14) RCW 82.04.2909 (Tax on aluminum smelters) and 2011 c 174 s
9 301;

10 (15) RCW 82.04.293 (International investment management services—
11 Definitions) and 1997 c 7 s 3 & 1995 c 229 s 1;

12 (16) RCW 82.04.294 (Tax on manufacturers or wholesalers of solar
13 energy systems) and 2013 2nd sp.s. c 13 s 902, 2011 c 179 s 1, 2010 c
14 114 s 109, 2009 c 469 s 501, 2007 c 54 s 8, & 2005 c 301 s 2;

15 (17) RCW 82.04.298 (Tax on qualified grocery distribution
16 cooperatives) and 2011 c 2 s 204, 2010 1st sp.s. c 23 s 511, 2008 c
17 49 s 1, & 2001 1st sp.s. c 9 s 1;

18 (18) RCW 82.04.426 (Exemptions—Semiconductor microchips) and 2010
19 c 114 s 110 & 2003 c 149 s 2;

20 (19) RCW 82.04.620 (Exemptions—Certain prescription drugs) and
21 2007 c 447 s 1;

22 (20) RCW 82.04.4451 (Credit against tax due—Maximum credit—
23 Table) and 2010 1st sp.s. c 23 s 1102, 1997 c 238 s 2, & 1994 sp.s. c
24 2 s 1;

25 (21) RCW 82.04.44525 (Credit—New employment for international
26 service activities in eligible areas—Designation of census tracts for
27 eligibility—Records—Tax due upon ineligibility—Interest assessment—
28 Information from employment security department) and 2009 c 535 s
29 1104, 2008 c 81 s 9, & 1998 c 313 s 2;

30 (22) RCW 82.04.447 (Credit—Natural or manufactured gas purchased
31 by direct service industrial customers—Reports) and 2001 c 214 s 9;

32 (23) RCW 82.04.448 (Credit—Manufacturing semiconductor materials)
33 and 2010 c 114 s 117 & 2003 c 149 s 9;

34 (24) RCW 82.04.4481 (Credit—Property taxes paid by aluminum
35 smelter) and 2011 c 174 s 302;

36 (25) RCW 82.04.4482 (Credit—Sales of electricity or gas to an
37 aluminum smelter) and 2004 c 24 s 9;

38 (26) RCW 82.04.4483 (Credit—Programming or manufacturing software
39 in rural counties) and 2010 c 114 s 119 & 2004 c 25 s 1;

1 (27) RCW 82.04.4485 (Credit—Mechanical lifting devices purchased
2 by hospitals) and 2006 c 165 s 5;

3 (28) RCW 82.04.4486 (Credit—Syrup taxes paid by buyer) and 2006 c
4 245 s 1;

5 (29) RCW 82.04.4489 (Credit—Motion picture competitiveness
6 program) and 2012 c 189 s 4, 2008 c 85 s 3, & 2006 c 247 s 5

7 (30) RCW 82.04.449 (Credit—Washington customized employment
8 training program) and 2012 c 46 s 3, 2010 c 114 s 121, 2009 c 296 s
9 3, & 2006 c 112 s 5.

10 **Sec. 4.** RCW 82.04.050 and 2013 2nd sp.s. c 13 s 802 are each
11 amended to read as follows:

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

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

23 (ii) Installs, repairs, cleans, alters, imprints, improves,
24 constructs, or decorates real or personal property of or for
25 consumers, if such tangible personal property becomes an ingredient
26 or component of such real or personal property without intervening
27 use by such person; or

28 (iii) Purchases for the purpose of consuming the property
29 purchased in producing for sale as a new article of tangible personal
30 property or substance, of which such property becomes an ingredient
31 or component or is a chemical used in processing, when the primary
32 purpose of such chemical is to create a chemical reaction directly
33 through contact with an ingredient of a new article being produced
34 for sale; or

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

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

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

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

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

16 (c) The term also means every sale of tangible personal property
17 to persons engaged in any business that is taxable under ((RCW
18 ~~82.04.280(1) (a), (b), and (g), 82.04.290, and 82.04.2908~~) section
19 1(2) of this act.

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

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

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

39 (c) The constructing, repairing, or improving of any structure
40 upon, above, or under any real property owned by an owner who conveys

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

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

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

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

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

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

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

6 (a)(i) Amusement and recreation services including but not
7 limited to golf, pool, billiards, skating, bowling, ski lifts and
8 tows, day trips for sightseeing purposes, and others, when provided
9 to consumers.

10 (ii) Until July 1, 2017, amusement and recreation services do not
11 include the opportunity to dance provided by an establishment in
12 exchange for a cover charge.

13 (iii) For purposes of this subsection (3)(a):

14 (A) "Cover charge" means a charge, regardless of its label, to
15 enter an establishment or added to the purchaser's bill by an
16 establishment or otherwise collected after entrance to the
17 establishment, and the purchaser is provided the opportunity to dance
18 in exchange for payment of the charge.

19 (B) "Opportunity to dance" means that an establishment provides a
20 designated physical space, on either a temporary or permanent basis,
21 where customers are allowed to dance and the establishment either
22 advertises or otherwise makes customers aware that it has an area for
23 dancing;

24 (b) Abstract, title insurance, and escrow services;

25 (c) Credit bureau services;

26 (d) Automobile parking and storage garage services;

27 (e) Landscape maintenance and horticultural services but
28 excluding (i) horticultural services provided to farmers and (ii)
29 pruning, trimming, repairing, removing, and clearing of trees and
30 brush near electric transmission or distribution lines or equipment,
31 if performed by or at the direction of an electric utility;

32 (f) Service charges associated with tickets to professional
33 sporting events; and

34 (g) The following personal services: Physical fitness services,
35 tanning salon services, tattoo parlor services, steam bath services,
36 turkish bath services, escort services, and dating services.

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

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

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

7 (6)(a) The term also includes the sale of prewritten computer
8 software to a consumer, regardless of the method of delivery to the
9 end user. For purposes of this subsection (6)(a), the sale of
10 prewritten computer software includes the sale of or charge made for
11 a key or an enabling or activation code, where the key or code is
12 required to activate prewritten computer software and put the
13 software into use. There is no separate sale of the key or code from
14 the prewritten computer software, regardless of how the sale may be
15 characterized by the vendor or by the purchaser.

16 The term "retail sale" does not include the sale of or charge
17 made for:

18 (i) Custom software; or

19 (ii) The customization of prewritten computer software.

20 (b)(i) The term also includes the charge made to consumers for
21 the right to access and use prewritten computer software, where
22 possession of the software is maintained by the seller or a third
23 party, regardless of whether the charge for the service is on a per
24 use, per user, per license, subscription, or some other basis.

25 (ii)(A) The service described in (b)(i) of this subsection (6)
26 includes the right to access and use prewritten computer software to
27 perform data processing.

28 (B) For purposes of this subsection (6)(b)(ii), "data processing"
29 means the systematic performance of operations on data to extract the
30 required information in an appropriate form or to convert the data to
31 usable information. Data processing includes check processing, image
32 processing, form processing, survey processing, payroll processing,
33 claim processing, and similar activities.

34 (7) The term also includes the sale of or charge made for an
35 extended warranty to a consumer. For purposes of this subsection,
36 "extended warranty" means an agreement for a specified duration to
37 perform the replacement or repair of tangible personal property at no
38 additional charge or a reduced charge for tangible personal property,
39 labor, or both, or to provide indemnification for the replacement or
40 repair of tangible personal property, based on the occurrence of

1 specified events. The term "extended warranty" does not include an
2 agreement, otherwise meeting the definition of extended warranty in
3 this subsection, if no separate charge is made for the agreement and
4 the value of the agreement is included in the sales price of the
5 tangible personal property covered by the agreement. For purposes of
6 this subsection, "sales price" has the same meaning as in RCW
7 82.08.010.

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

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

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

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

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

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

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

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

35 (10) The term does not include the sale of or charge made for
36 labor and services rendered in respect to the building, repairing, or
37 improving of any street, place, road, highway, easement, right-of-
38 way, mass public transportation terminal or parking facility, bridge,
39 tunnel, or trestle which is owned by a municipal corporation or
40 political subdivision of the state or by the United States and which

1 is used or to be used primarily for foot or vehicular traffic
2 including mass transportation vehicles of any kind.

3 (11) The term also does not include sales of chemical sprays or
4 washes to persons for the purpose of postharvest treatment of fruit
5 for the prevention of scald, fungus, mold, or decay, nor does it
6 include sales of feed, seed, seedlings, fertilizer, agents for
7 enhanced pollination including insects such as bees, and spray
8 materials to: (a) Persons who participate in the federal conservation
9 reserve program, the environmental quality incentives program, the
10 wetlands reserve program, and the wildlife habitat incentives
11 program, or their successors administered by the United States
12 department of agriculture; (b) farmers for the purpose of producing
13 for sale any agricultural product; and (c) farmers acting under
14 cooperative habitat development or access contracts with an
15 organization exempt from federal income tax under 26 U.S.C. Sec.
16 501(c)(3) of the federal internal revenue code or the Washington
17 state department of fish and wildlife to produce or improve wildlife
18 habitat on land that the farmer owns or leases.

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

35 (13) The term does not include the sale of or charge made for
36 labor, services, or tangible personal property pursuant to agreements
37 providing maintenance services for bus, rail, or rail fixed guideway
38 equipment when a regional transit authority is the recipient of the
39 labor, services, or tangible personal property, and a transit agency,
40 as defined in RCW 81.104.015, performs the labor or services.

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

4 **Sec. 5.** RCW 82.04.051 and 1999 c 212 s 2 are each amended to
5 read as follows:

6 (1) As used in RCW 82.04.050, the term "services rendered in
7 respect to" means those services that are directly related to the
8 constructing, building, repairing, improving, and decorating of
9 buildings or other structures and that are performed by a person who
10 is responsible for the performance of the constructing, building,
11 repairing, improving, or decorating activity. The term does not
12 include services such as engineering, architectural, surveying,
13 flagging, accounting, legal, consulting, or administrative services
14 provided to the consumer of, or person responsible for performing,
15 the constructing, building, repairing, improving, or decorating
16 services.

17 (2) A contract or agreement under which a person is responsible
18 for both services that would otherwise be subject to tax as a service
19 under (~~RCW 82.04.290(2)~~) section 1(2) of this act and also
20 constructing, building, repairing, improving, or decorating
21 activities that would otherwise be subject to tax under another
22 section of this chapter is subject to the tax that applies to the
23 predominant activity under the contract or agreement.

24 (3) Unless otherwise provided by law, a contract or agreement
25 under which a person is responsible for activities that are subject
26 to tax as a service under (~~RCW 82.04.290(2)~~) section 1(2) of this
27 act, and a subsequent contract or agreement under which the same
28 person is responsible for constructing, building, repairing,
29 improving, or decorating activities subject to tax under another
30 section of this chapter, (~~shall~~) may not be combined and taxed as a
31 single activity if at the time of the first contract or agreement it
32 was not contemplated by the parties, as evidenced by the facts, that
33 the same person would be awarded both contracts.

34 (4) As used in this section "responsible for the performance"
35 means that the person is obligated to perform the activities, either
36 personally or through a third party. A person who reviews work for a
37 consumer, retailer, or wholesaler but does not supervise or direct
38 the work is not responsible for the performance of the work. A person
39 who is financially obligated for the work, such as a bank, but who

1 does not have control over the work itself is not responsible for the
2 performance of the work.

3 **Sec. 6.** RCW 82.04.062 and 1985 c 471 s 5 are each amended to
4 read as follows:

5 (1) For purposes of this chapter, "wholesale sale," "sale at
6 wholesale," "retail sale," and "sale at retail" do not include the
7 sale of precious metal bullion or monetized bullion.

8 ~~(2) ((In computing tax under this chapter on the business of
9 making sales of precious metal bullion or monetized bullion, the tax
10 shall be imposed on the amounts received as commissions upon
11 transactions for the accounts of customers over and above the amount
12 paid to other dealers associated in such transactions, but no
13 deduction or offset is allowed on account of salaries or commissions
14 paid to salesmen or other employees.~~

15 ~~(3))~~ For purposes of this section, "precious metal bullion"
16 means any precious metal which has been put through a process of
17 smelting or refining, including, but not limited to, gold, silver,
18 platinum, rhodium, and palladium, and which is in such state or
19 condition that its value depends upon its contents and not upon its
20 form. For purposes of this section, "monetized bullion" means coins
21 or other forms of money manufactured from gold, silver, or other
22 metals and heretofore, now, or hereafter used as a medium of exchange
23 under the laws of this state, the United States, or any foreign
24 nation, but does not include coins or money sold to be manufactured
25 into jewelry or works of art.

26 **Sec. 7.** RCW 82.04.190 and 2014 c 97 s 302 are each amended to
27 read as follows:

28 "Consumer" means the following:

29 (1) Any person who purchases, acquires, owns, holds, or uses any
30 article of tangible personal property irrespective of the nature of
31 the person's business and including, among others, without limiting
32 the scope hereof, persons who install, repair, clean, alter, improve,
33 construct, or decorate real or personal property of or for consumers
34 other than for the purpose of:

35 (a) Resale as tangible personal property in the regular course of
36 business;

37 (b) Incorporating such property as an ingredient or component of
38 real or personal property when installing, repairing, cleaning,

1 altering, imprinting, improving, constructing, or decorating such
2 real or personal property of or for consumers;

3 (c) Consuming such property in producing for sale as a new
4 article of tangible personal property or a new substance, of which
5 such property becomes an ingredient or component or as a chemical
6 used in processing, when the primary purpose of such chemical is to
7 create a chemical reaction directly through contact with an
8 ingredient of a new article being produced for sale;

9 (d) Consuming the property purchased in producing ferrosilicon
10 which is subsequently used in producing magnesium for sale, if the
11 primary purpose of such property is to create a chemical reaction
12 directly through contact with an ingredient of ferrosilicon; or

13 (e) Satisfying the person's obligations under an extended
14 warranty as defined in RCW 82.04.050(7), if such tangible personal
15 property replaces or becomes an ingredient or component of property
16 covered by the extended warranty without intervening use by such
17 person;

18 (2)(a) Any person engaged in any business activity taxable under
19 (~~RCW 82.04.290 or 82.04.2908~~) section 1(2) of this act; (b) any
20 person who purchases, acquires, or uses any competitive telephone
21 service, ancillary services, or telecommunications service as those
22 terms are defined in RCW 82.04.065, other than for resale in the
23 regular course of business; (c) any person who purchases, acquires,
24 or uses any service defined in RCW 82.04.050(2) (a) or (g), other
25 than for resale in the regular course of business or for the purpose
26 of satisfying the person's obligations under an extended warranty as
27 defined in RCW 82.04.050(7); (d) any person who purchases, acquires,
28 or uses any amusement and recreation service defined in RCW
29 82.04.050(3)(a), other than for resale in the regular course of
30 business; (e) any person who purchases or acquires an extended
31 warranty as defined in RCW 82.04.050(7) other than for resale in the
32 regular course of business; and (f) any person who is an end user of
33 software. For purposes of this subsection (2)(f) and RCW
34 82.04.050(6), a person who purchases or otherwise acquires prewritten
35 computer software, who provides services described in RCW
36 82.04.050(6)(b) and who will charge consumers for the right to access
37 and use the prewritten computer software, is not an end user of the
38 prewritten computer software;

39 (3) Any person engaged in the business of contracting for the
40 building, repairing or improving of any street, place, road, highway,

1 easement, right-of-way, mass public transportation terminal or
2 parking facility, bridge, tunnel, or trestle which is owned by a
3 municipal corporation or political subdivision of the state of
4 Washington or by the United States and which is used or to be used
5 primarily for foot or vehicular traffic including mass transportation
6 vehicles of any kind (~~as defined in RCW 82.04.280~~), in respect to
7 tangible personal property when such person incorporates such
8 property as an ingredient or component of such publicly owned street,
9 place, road, highway, easement, right-of-way, mass public
10 transportation terminal or parking facility, bridge, tunnel, or
11 trestle by installing, placing or spreading the property in or upon
12 the right-of-way of such street, place, road, highway, easement,
13 bridge, tunnel, or trestle or in or upon the site of such mass public
14 transportation terminal or parking facility;

15 (4) Any person who is an owner, lessee or has the right of
16 possession to or an easement in real property (~~which~~) that is being
17 constructed, repaired, decorated, improved, or otherwise altered by a
18 person engaged in business, excluding only (a) municipal corporations
19 or political subdivisions of the state in respect to labor and
20 services rendered to their real property which is used or held for
21 public road purposes, and (b) the United States, instrumentalities
22 thereof, and county and city housing authorities created pursuant to
23 chapter 35.82 RCW in respect to labor and services rendered to their
24 real property. Nothing contained in this or any other subsection of
25 this definition (~~shall~~) may be construed to modify any other
26 definition of "consumer";

27 (5) Any person who is an owner, lessee, or has the right of
28 possession to personal property which is being constructed, repaired,
29 improved, cleaned, imprinted, or otherwise altered by a person
30 engaged in business;

31 (6) Any person engaged in the business of constructing,
32 repairing, decorating, or improving new or existing buildings or
33 other structures under, upon, or above real property of or for the
34 United States, any instrumentality thereof, or a county or city
35 housing authority created pursuant to chapter 35.82 RCW, including
36 the installing or attaching of any article of tangible personal
37 property therein or thereto, whether or not such personal property
38 becomes a part of the realty by virtue of installation; also, any
39 person engaged in the business of clearing land and moving earth of
40 or for the United States, any instrumentality thereof, or a county or

1 city housing authority created pursuant to chapter 35.82 RCW. Any
2 such person is a consumer within the meaning of this subsection in
3 respect to tangible personal property incorporated into, installed
4 in, or attached to such building or other structure by such person,
5 except that consumer does not include any person engaged in the
6 business of constructing, repairing, decorating, or improving new or
7 existing buildings or other structures under, upon, or above real
8 property of or for the United States, or any instrumentality thereof,
9 if the investment project would qualify for sales and use tax
10 deferral under chapter 82.63 RCW if undertaken by a private entity;

11 (7) Any person who is a lessor of machinery and equipment, the
12 rental of which is exempt from the tax imposed by RCW 82.08.020 under
13 RCW 82.08.02565, with respect to the sale of or charge made for
14 tangible personal property consumed in respect to repairing the
15 machinery and equipment, if the tangible personal property has a
16 useful life of less than one year. Nothing contained in this or any
17 other subsection of this section may be construed to modify any other
18 definition of "consumer";

19 (8) Any person engaged in the business of cleaning up for the
20 United States, or its instrumentalities, radioactive waste and other
21 by-products of weapons production and nuclear research and
22 development;

23 (9) Any person who is an owner, lessee, or has the right of
24 possession of tangible personal property that, under the terms of an
25 extended warranty as defined in RCW 82.04.050(7), has been repaired
26 or is replacement property, but only with respect to the sale of or
27 charge made for the repairing of the tangible personal property or
28 the replacement property;

29 (10) Any person who purchases, acquires, or uses services
30 described in RCW 82.04.050(6)(b) other than:

31 (a) For resale in the regular course of business; or

32 (b) For purposes of consuming the service described in RCW
33 82.04.050(6)(b) in producing for sale a new product, but only if such
34 service becomes a component of the new product. For purposes of this
35 subsection (10), "product" means a digital product, an article of
36 tangible personal property, or the service described in RCW
37 82.04.050(6)(b);

38 (11)(a) Any end user of a digital product or digital code.
39 "Consumer" does not include any person who is not an end user of a
40 digital product or a digital code and purchases, acquires, owns,

1 holds, or uses any digital product or digital code for purposes of
2 consuming the digital product or digital code in producing for sale a
3 new product, but only if the digital product or digital code becomes
4 a component of the new product. A digital code becomes a component of
5 a new product if the digital good or digital automated service
6 acquired through the use of the digital code becomes incorporated
7 into a new product. For purposes of this subsection, "product" has
8 the same meaning as in subsection (10) of this section.

9 (b)(i) For purposes of this subsection, "end user" means any
10 taxpayer as defined in RCW 82.12.010 other than a taxpayer who
11 receives by contract a digital product for further commercial
12 broadcast, rebroadcast, transmission, retransmission, licensing,
13 relicensing, distribution, redistribution or exhibition of the
14 product, in whole or in part, to others. A person that purchases
15 digital products or digital codes for the purpose of giving away such
16 products or codes will not be considered to have engaged in the
17 distribution or redistribution of such products or codes and will be
18 treated as an end user;

19 (ii) If a purchaser of a digital code does not receive the
20 contractual right to further redistribute, after the digital code is
21 redeemed, the underlying digital product to which the digital code
22 relates, then the purchaser of the digital code is an end user. If
23 the purchaser of the digital code receives the contractual right to
24 further redistribute, after the digital code is redeemed, the
25 underlying digital product to which the digital code relates, then
26 the purchaser of the digital code is not an end user. A purchaser of
27 a digital code who has the contractual right to further redistribute
28 the digital code is an end user if that purchaser does not have the
29 right to further redistribute, after the digital code is redeemed,
30 the underlying digital product to which the digital code relates;

31 (12) Any person who provides services described in RCW
32 82.04.050(9). Any such person is a consumer with respect to the
33 purchase, acquisition, or use of the tangible personal property that
34 the person provides along with an operator in rendering services
35 defined as a retail sale in RCW 82.04.050(9). Any such person may
36 also be a consumer under other provisions of this section;

37 (13) Any person who purchases, acquires, owns, holds, or uses
38 chemical sprays or washes for the purpose of postharvest treatment of
39 fruit for the prevention of scald, fungus, mold, or decay, or who
40 purchases feed, seed, seedlings, fertilizer, agents for enhanced

1 pollination including insects such as bees, and spray materials, is
2 not a consumer of such items, but only to the extent that the items:

3 (a) Are used in relation to the person's participation in the
4 federal conservation reserve program, the environmental quality
5 incentives program, the wetlands reserve program, the wildlife
6 habitat incentives program, or their successors administered by the
7 United States department of agriculture;

8 (b) Are for use by a farmer for the purpose of producing for sale
9 any agricultural product; or

10 (c) Are for use by a farmer to produce or improve wildlife
11 habitat on land the farmer owns or leases while acting under
12 cooperative habitat development or access contracts with an
13 organization exempt from federal income tax under 26 U.S.C. Sec.
14 501(c)(3) of the federal internal revenue code or the Washington
15 state department of fish and wildlife; and

16 (14) A regional transit authority is not a consumer with respect
17 to labor, services, or tangible personal property purchased pursuant
18 to agreements providing maintenance services for bus, rail, or rail
19 fixed guideway equipment when a transit agency, as defined in RCW
20 81.104.015, performs the labor or services.

21 **Sec. 8.** RCW 82.04.2403 and 1994 c 167 s 1 are each amended to
22 read as follows:

23 The tax imposed by (~~RCW 82.04.240~~) section 1(1) of this act
24 does not apply to cleaning fish. "Cleaning fish" means the removal of
25 the head, fins, or viscera from fresh fish without further
26 processing, other than freezing.

27 **Sec. 9.** RCW 82.04.255 and 2011 c 322 s 2 are each amended to
28 read as follows:

29 (1) (~~Upon every person engaging within the state in the business~~
30 ~~of providing real estate brokerage services; as to such persons, the~~
31 ~~amount of the tax with respect to such business is equal to the gross~~
32 ~~income of the business, multiplied by the rate of 1.5 percent.~~

33 (+2)) The measure of the tax on real estate commissions earned by
34 the real estate firm is the gross commission earned by the particular
35 real estate firm including that portion of the commission paid to
36 brokers, including designated and managing brokers, in the same firm
37 on a particular transaction. However, when a real estate commission
38 on a particular transaction is divided among real estate firms at the

1 closing of the transaction, including a firm located out of state,
2 each firm must pay the tax only upon its respective shares of said
3 commission. Moreover, when the real estate firm has paid the tax as
4 provided herein, brokers, including designated and managing brokers,
5 within the same real estate firm may not be required to pay a similar
6 tax upon the same transaction. If any firm located out of state
7 receives a share of commission on a particular transaction, that
8 company or broker must pay the tax based on the requirements of this
9 section and RCW 82.04.067.

10 ~~((3))~~ (2) For the purposes of this section, "broker,"
11 "designated broker," "managing broker," and "real estate firm" have
12 the same meaning as provided in RCW 18.85.011.

13 **Sec. 10.** RCW 82.04.257 and 2010 c 111 s 301 are each amended to
14 read as follows:

15 (1) Except as provided in subsection (2) of this section, upon
16 every person engaging within this state in the business of making
17 sales at retail or wholesale of digital goods, digital codes, digital
18 automated services, or services described in RCW 82.04.050 (2)(g) or
19 (6)(b), as to such persons, the amount of tax with respect to such
20 business is equal to the gross proceeds of sales of the business,
21 multiplied by the rate ~~((of 0.471 percent in the case of retail sales
22 and by the rate of 0.484 percent in the case of wholesale sales))~~
23 provided under section 1(1) of this act.

24 (2) Persons providing subscription television services or
25 subscription radio services are subject to tax under ~~((RCW
26 82.04.290(2))~~ section 1(1) of this act on the gross income of the
27 business received from providing such services.

28 (3) For purposes of this section, a person is considered to be
29 engaging within this state in the business of making sales of digital
30 goods, digital codes, digital automated services, or services
31 described in RCW 82.04.050 (2)(g) or (6)(b), if the person makes
32 sales of digital goods, digital codes, digital automated services, or
33 services described in RCW 82.04.050 (2)(g) or (6)(b) and the sales
34 are sourced to this state under RCW 82.32.730 for sales tax purposes
35 or would have been sourced to this state under RCW 82.32.730 if the
36 sale had been taxable under chapter 82.08 RCW.

37 (4) A person subject to tax under this section is subject to the
38 mandatory electronic filing and payment requirements in RCW
39 82.32.080.

1 **Sec. 11.** RCW 82.04.260 and 2014 c 140 s 6 and 2014 c 140 s 4 are
2 each reenacted and amended to read as follows:

3 (1) (~~Upon every person engaging within this state in the~~
4 ~~business of manufacturing:~~

5 ~~(a) Wheat into flour, barley into pearl barley, soybeans into~~
6 ~~soybean oil, canola into canola oil, canola meal, or canola by-~~
7 ~~products, or sunflower seeds into sunflower oil; as to such persons~~
8 ~~the amount of tax with respect to such business is equal to the value~~
9 ~~of the flour, pearl barley, oil, canola meal, or canola by product~~
10 ~~manufactured, multiplied by the rate of 0.138 percent;~~

11 ~~(b) Beginning July 1, 2015, seafood products that remain in a~~
12 ~~raw, raw frozen, or raw salted state at the completion of the~~
13 ~~manufacturing by that person; or selling manufactured seafood~~
14 ~~products that remain in a raw, raw frozen, or raw salted state at the~~
15 ~~completion of the manufacturing, to purchasers who transport in the~~
16 ~~ordinary course of business the goods out of this state; as to such~~
17 ~~persons the amount of tax with respect to such business is equal to~~
18 ~~the value of the products manufactured or the gross proceeds derived~~
19 ~~from such sales, multiplied by the rate of 0.138 percent. Sellers~~
20 ~~must keep and preserve records for the period required by RCW~~
21 ~~82.32.070 establishing that the goods were transported by the~~
22 ~~purchaser in the ordinary course of business out of this state;~~

23 ~~(c)(i) Beginning July 1, 2015, dairy products; or selling dairy~~
24 ~~products that the person has manufactured to purchasers who either~~
25 ~~transport in the ordinary course of business the goods out of state~~
26 ~~or purchasers who use such dairy products as an ingredient or~~
27 ~~component in the manufacturing of a dairy product; as to such persons~~
28 ~~the tax imposed is equal to the value of the products manufactured or~~
29 ~~the gross proceeds derived from such sales multiplied by the rate of~~
30 ~~0.138 percent. Sellers must keep and preserve records for the period~~
31 ~~required by RCW 82.32.070 establishing that the goods were~~
32 ~~transported by the purchaser in the ordinary course of business out~~
33 ~~of this state or sold to a manufacturer for use as an ingredient or~~
34 ~~component in the manufacturing of a dairy product.~~

35 ~~(ii) For the purposes of this subsection (1)(c), "dairy products"~~
36 ~~means:~~

37 ~~(A) Products, not including any marijuana-infused product, that~~
38 ~~as of September 20, 2001, are identified in 21 C.F.R., chapter 1,~~
39 ~~parts 131, 133, and 135, including by products from the manufacturing~~
40 ~~of the dairy products, such as whey and casein; and~~

1 ~~(B) Products comprised of not less than seventy percent dairy~~
2 ~~products that qualify under (c)(ii)(A) of this subsection, measured~~
3 ~~by weight or volume.~~

4 ~~(iii) The preferential tax rate provided to taxpayers under this~~
5 ~~subsection (1)(c) does not apply to sales of dairy products on or~~
6 ~~after July 1, 2023, where a dairy product is used by the purchaser as~~
7 ~~an ingredient or component in the manufacturing in Washington of a~~
8 ~~dairy product;~~

9 ~~(d)(i) Beginning July 1, 2015, fruits or vegetables by canning,~~
10 ~~preserving, freezing, processing, or dehydrating fresh fruits or~~
11 ~~vegetables, or selling at wholesale fruits or vegetables manufactured~~
12 ~~by the seller by canning, preserving, freezing, processing, or~~
13 ~~dehydrating fresh fruits or vegetables and sold to purchasers who~~
14 ~~transport in the ordinary course of business the goods out of this~~
15 ~~state; as to such persons the amount of tax with respect to such~~
16 ~~business is equal to the value of the products manufactured or the~~
17 ~~gross proceeds derived from such sales multiplied by the rate of~~
18 ~~0.138 percent. Sellers must keep and preserve records for the period~~
19 ~~required by RCW 82.32.070 establishing that the goods were~~
20 ~~transported by the purchaser in the ordinary course of business out~~
21 ~~of this state.~~

22 ~~(ii) For purposes of this subsection (1)(d), "fruits" and~~
23 ~~"vegetables" do not include marijuana, useable marijuana, or~~
24 ~~marijuana-infused products;~~

25 ~~(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or~~
26 ~~biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as~~
27 ~~to such persons the amount of tax with respect to the business is~~
28 ~~equal to the value of alcohol fuel, biodiesel fuel, or biodiesel~~
29 ~~feedstock manufactured, multiplied by the rate of 0.138 percent; and~~

30 ~~(f) Wood biomass fuel as defined in RCW 82.29A.135; as to such~~
31 ~~persons the amount of tax with respect to the business is equal to~~
32 ~~the value of wood biomass fuel manufactured, multiplied by the rate~~
33 ~~of 0.138 percent.~~

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

38 ~~(3)) Upon every nonprofit corporation and nonprofit association~~
39 ~~engaging within this state in research and development, as to such~~
40 ~~corporations and associations, the amount of tax with respect to such~~

1 activities is equal to the gross income derived from such activities
2 multiplied by the rate of 0.484 percent.

3 ~~((4) Upon every person engaging within this state in the
4 business of slaughtering, breaking and/or processing perishable meat
5 products and/or selling the same at wholesale only and not at retail;
6 as to such persons the tax imposed is equal to the gross proceeds
7 derived from such sales multiplied by the rate of 0.138 percent.~~

8 ~~(5) Upon every person engaging within this state in the business
9 of acting as a travel agent or tour operator; as to such persons the
10 amount of the tax with respect to such activities is equal to the
11 gross income derived from such activities multiplied by the rate of
12 0.275 percent.~~

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

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

1 ~~convenient place for further movement to export mode; documentation~~
2 ~~services in connection with the receipt, delivery, checking, care,~~
3 ~~custody and control of cargo required in the transfer of cargo;~~
4 ~~imported automobile handling prior to delivery to consignee; terminal~~
5 ~~stevedoring and incidental vessel services, including but not limited~~
6 ~~to plugging and unplugging refrigerator service to containers,~~
7 ~~trailers, and other refrigerated cargo receptacles, and securing ship~~
8 ~~hatch covers.~~

9 ~~(8))~~ (2)(a) Upon every person engaging within this state in the
10 business of disposing of low-level waste, as defined in RCW
11 43.145.010; as to such persons the amount of the tax with respect to
12 such business is equal to the gross income of the business, excluding
13 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
14 3.3 percent.

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

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

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

32 ~~(11))~~ (3)(a) Beginning October 1, 2005, upon every person
33 engaging within this state in the business of manufacturing
34 commercial airplanes, or components of such airplanes, or making
35 sales, at retail or wholesale, of commercial airplanes or components
36 of such airplanes, manufactured by the seller, as to such persons the
37 amount of tax with respect to such business is, in the case of
38 manufacturers, equal to the value of the product manufactured and the
39 gross proceeds of sales of the product manufactured, or in the case

1 of processors for hire, equal to the gross income of the business,
2 multiplied by the rate of:

3 (i) 0.4235 percent from October 1, 2005, through June 30, 2007;
4 and

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

6 (b) Beginning July 1, 2008, upon every person who is not eligible
7 to report under the provisions of (a) of this subsection (~~((+11+))~~) (3)
8 and is engaging within this state in the business of manufacturing
9 tooling specifically designed for use in manufacturing commercial
10 airplanes or components of such airplanes, or making sales, at retail
11 or wholesale, of such tooling manufactured by the seller, as to such
12 persons the amount of tax with respect to such business is, in the
13 case of manufacturers, equal to the value of the product manufactured
14 and the gross proceeds of sales of the product manufactured, or in
15 the case of processors for hire, be equal to the gross income of the
16 business, multiplied by the rate of 0.2904 percent.

17 (c) For the purposes of this subsection (~~((+11+))~~) (3), "commercial
18 airplane" and "component" have the same meanings as provided in RCW
19 82.32.550.

20 (d) In addition to all other requirements under this title, a
21 person reporting under the tax rate provided in this subsection
22 (~~((+11+))~~) (3) must file a complete annual report with the department
23 under RCW 82.32.534.

24 (e)(i) Except as provided in (e)(ii) of this subsection (~~((+11+))~~)
25 (3), this subsection (~~((+11+))~~) (3) does not apply on and after July 1,
26 2040.

27 (ii) With respect to the manufacturing of commercial airplanes or
28 making sales, at retail or wholesale, of commercial airplanes, this
29 subsection (~~((+11+))~~) (3) does not apply on and after July 1st of the
30 year in which the department makes a determination that any final
31 assembly or wing assembly of any version or variant of a commercial
32 airplane that is the basis of a siting of a significant commercial
33 airplane manufacturing program in the state under RCW 82.32.850 has
34 been sited outside the state of Washington. This subsection (~~((+11+))~~)
35 (3)(e)(ii) only applies to the manufacturing or sale of commercial
36 airplanes that are the basis of a siting of a significant commercial
37 airplane manufacturing program in the state under RCW 82.32.850.

38 (f) Sections 1 and 2 of this act do not apply to a person
39 eligible to report under (a) of this subsection (3).

1 ~~((12)(a) Until July 1, 2024, upon every person engaging within~~
2 ~~this state in the business of extracting timber or extracting for~~
3 ~~hire timber; as to such persons the amount of tax with respect to the~~
4 ~~business is, in the case of extractors, equal to the value of~~
5 ~~products, including by products, extracted, or in the case of~~
6 ~~extractors for hire, equal to the gross income of the business,~~
7 ~~multiplied by the rate of 0.4235 percent from July 1, 2006, through~~
8 ~~June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,~~
9 ~~2024.~~

10 ~~(b) Until July 1, 2024, upon every person engaging within this~~
11 ~~state in the business of manufacturing or processing for hire: (i)~~
12 ~~Timber into timber products or wood products; or (ii) timber products~~
13 ~~into other timber products or wood products; as to such persons the~~
14 ~~amount of the tax with respect to the business is, in the case of~~
15 ~~manufacturers, equal to the value of products, including by products,~~
16 ~~manufactured, or in the case of processors for hire, equal to the~~
17 ~~gross income of the business, multiplied by the rate of 0.4235~~
18 ~~percent from July 1, 2006, through June 30, 2007, and 0.2904 percent~~
19 ~~from July 1, 2007, through June 30, 2024.~~

20 ~~(c) Until July 1, 2024, upon every person engaging within this~~
21 ~~state in the business of selling at wholesale: (i) Timber extracted~~
22 ~~by that person; (ii) timber products manufactured by that person from~~
23 ~~timber or other timber products; or (iii) wood products manufactured~~
24 ~~by that person from timber or timber products; as to such persons the~~
25 ~~amount of the tax with respect to the business is equal to the gross~~
26 ~~proceeds of sales of the timber, timber products, or wood products~~
27 ~~multiplied by the rate of 0.4235 percent from July 1, 2006, through~~
28 ~~June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,~~
29 ~~2024.~~

30 ~~(d) Until July 1, 2024, upon every person engaging within this~~
31 ~~state in the business of selling standing timber; as to such persons~~
32 ~~the amount of the tax with respect to the business is equal to the~~
33 ~~gross income of the business multiplied by the rate of 0.2904~~
34 ~~percent. For purposes of this subsection (12)(d), "selling standing~~
35 ~~timber" means the sale of timber apart from the land, where the buyer~~
36 ~~is required to sever the timber within thirty months from the date of~~
37 ~~the original contract, regardless of the method of payment for the~~
38 ~~timber and whether title to the timber transfers before, upon, or~~
39 ~~after severance.~~

1 ~~(e) For purposes of this subsection, the following definitions~~
2 ~~apply:~~

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

7 ~~(ii) "Paper and paper products" means products made of interwoven~~
8 ~~cellulosic fibers held together largely by hydrogen bonding. "Paper~~
9 ~~and paper products" includes newsprint; office, printing, fine, and~~
10 ~~pressure-sensitive papers; paper napkins, towels, and toilet tissue;~~
11 ~~kraft bag, construction, and other kraft industrial papers;~~
12 ~~paperboard, liquid packaging containers, containerboard, corrugated,~~
13 ~~and solid fiber containers including linerboard and corrugated~~
14 ~~medium; and related types of cellulosic products containing~~
15 ~~primarily, by weight or volume, cellulosic materials. "Paper and~~
16 ~~paper products" does not include books, newspapers, magazines,~~
17 ~~periodicals, and other printed publications, advertising materials,~~
18 ~~calendars, and similar types of printed materials.~~

19 ~~(iii) "Recycled paper" means paper and paper products having~~
20 ~~fifty percent or more of their fiber content that comes from~~
21 ~~postconsumer waste. For purposes of this subsection (12)(e)(iii),~~
22 ~~"postconsumer waste" means a finished material that would normally be~~
23 ~~disposed of as solid waste, having completed its life cycle as a~~
24 ~~consumer item.~~

25 ~~(iv) "Timber" means forest trees, standing or down, on privately~~
26 ~~or publicly owned land. "Timber" does not include Christmas trees~~
27 ~~that are cultivated by agricultural methods or short rotation~~
28 ~~hardwoods as defined in RCW 84.33.035.~~

29 ~~(v) "Timber products" means:~~

30 ~~(A) Logs, wood chips, sawdust, wood waste, and similar products~~
31 ~~obtained wholly from the processing of timber, short rotation~~
32 ~~hardwoods as defined in RCW 84.33.035, or both;~~

33 ~~(B) Pulp, including market pulp and pulp derived from recovered~~
34 ~~paper or paper products; and~~

35 ~~(C) Recycled paper, but only when used in the manufacture of~~
36 ~~biocomposite surface products.~~

37 ~~(vi) "Wood products" means paper and paper products; dimensional~~
38 ~~lumber; engineered wood products such as particleboard, oriented~~
39 ~~strand board, medium density fiberboard, and plywood; wood doors;~~
40 ~~wood windows; and biocomposite surface products.~~

1 ~~(f) Except for small harvesters as defined in RCW 84.33.035, a~~
2 ~~person reporting under the tax rate provided in this subsection (12)~~
3 ~~must file a complete annual survey with the department under RCW~~
4 ~~82.32.585.~~

5 ~~(13) Upon every person engaging within this state in inspecting,~~
6 ~~testing, labeling, and storing canned salmon owned by another person,~~
7 ~~as to such persons, the amount of tax with respect to such activities~~
8 ~~is equal to the gross income derived from such activities multiplied~~
9 ~~by the rate of 0.484 percent.~~

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

14 ~~(b) A person reporting under the tax rate provided in this~~
15 ~~subsection (14) must file a complete annual report with the~~
16 ~~department under RCW 82.32.534.)~~

17 **Sec. 12.** RCW 82.04.261 and 2010 1st sp.s. c 23 s 510 are each
18 amended to read as follows:

19 (1) In addition to the taxes imposed under ~~((RCW 82.04.260(11))~~
20 section 1(1) of this act, a surcharge is imposed on those persons who
21 are subject to ~~((any of the taxes imposed under RCW 82.04.260(11))~~
22 tax under section 1(1) of this act on the extracting or extracting
23 for hire, manufacturing or manufacturing for hire, selling timber,
24 timber products, or wood products, or selling standing timber, as
25 described under section 1, chapter 300, Laws of 2006. Except as
26 otherwise provided in this section, the surcharge is equal to 0.052
27 percent. The surcharge is added to the ~~((rates provided in RCW~~
28 ~~82.04.260(11) (a), (b), (c), and (d))~~ tax rate under section 1(1) of
29 this act and must be imposed on the gross income of the business. The
30 surcharge and this section expire July 1, 2024.

31 (2) All receipts from the surcharge imposed under this section
32 must be deposited into the forest and fish support account created in
33 RCW 76.09.405.

34 (3)(a) The surcharge imposed under this section is suspended if:

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

37 (ii) The office of financial management certifies to the
38 department that the federal government has appropriated at least two
39 million dollars for participation in forest and fish report-related

1 activities by federally recognized Indian tribes located within the
2 geographical boundaries of the state of Washington for any federal
3 fiscal year.

4 (b)(i) The suspension of the surcharge under (a)(i) of this
5 subsection (3) takes effect on the first day of the calendar month
6 that is at least thirty days after the end of the month during which
7 the department determines that receipts from the surcharge total at
8 least eight million dollars during the fiscal biennium. The surcharge
9 is imposed again at the beginning of the following fiscal biennium.

10 (ii) The suspension of the surcharge under (a)(ii) of this
11 subsection (3) takes effect on the later of the first day of October
12 of any federal fiscal year for which the federal government
13 appropriates at least two million dollars for participation in forest
14 and fish report-related activities by federally recognized Indian
15 tribes located within the geographical boundaries of the state of
16 Washington, or the first day of a calendar month that is at least
17 thirty days following the date that the office of financial
18 management makes a certification to the department under subsection
19 (5) of this section. The surcharge is imposed again on the first day
20 of the following July.

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

29 (b) The department must adjust the surcharge by an amount that
30 the department estimates will cause the amount of funds deposited
31 into the forest and fish support account for the state fiscal year
32 that begins July 1st and that includes the beginning of the federal
33 fiscal year for which the federal appropriation is made, to be
34 reduced by twice the amount of the federal appropriation for
35 participation in forest and fish report-related activities by
36 federally recognized Indian tribes located within the geographical
37 boundaries of the state of Washington.

38 (c) Any adjustment in the surcharge takes effect at the beginning
39 of a calendar month that is at least thirty days after the date that

1 the office of financial management makes the certification under
2 subsection (5) of this section.

3 (d) The surcharge is imposed again at the rate provided in
4 subsection (1) of this section on the first day of the following
5 state fiscal year unless the surcharge is suspended under subsection
6 (3) of this section or adjusted for that fiscal year under this
7 subsection.

8 (e) Adjustments of the amount of the surcharge by the department
9 are final and may not be used to challenge the validity of the
10 surcharge imposed under this section.

11 (f) The department must provide timely notice to affected
12 taxpayers of the suspension of the surcharge or an adjustment of the
13 surcharge.

14 (5) The office of financial management must make the
15 certification to the department as to the status of federal
16 appropriations for tribal participation in forest and fish report-
17 related activities.

18 **Sec. 13.** RCW 82.04.285 and 2014 c 97 s 303 are each amended to
19 read as follows:

20 (1) ~~((Upon every person engaging within this state in the
21 business of operating contests of chance; as to such persons, the
22 amount of tax with respect to the business of operating contests of
23 chance is equal to the gross income of the business derived from
24 contests of chance multiplied by the rate of 1.5 percent.~~

25 ~~(2))~~ An additional tax is imposed on those persons ~~((subject to
26 tax in subsection (1) of this section))~~ engaging within this state in
27 the business of operating contests of chance. The amount of the
28 additional tax with respect to the business of operating contests of
29 chance is equal to the gross income of the business derived from
30 contests of chance multiplied by the rate of 0.1 percent through June
31 30, 2006, and 0.13 percent thereafter. The money collected under this
32 subsection (2) ~~((shall))~~ must be deposited in the problem gambling
33 account created in RCW 43.20A.892. This subsection does not apply to
34 businesses operating contests of chance when the gross income from
35 the operation of contests of chance is less than fifty thousand
36 dollars per year.

37 (3)(a) For the purpose of this section, "contests of chance"
38 means any contests, games, gaming schemes, or gaming devices, other
39 than the state lottery as defined in RCW 67.70.010, in which the

1 outcome depends in a material degree upon an element of chance,
2 notwithstanding that skill of the contestants may also be a factor in
3 the outcome. The term includes social card games, bingo, raffle, and
4 punchboard games, and pull-tabs as defined in chapter 9.46 RCW.

5 (b) The term does not include: (i) Race meet for the conduct of
6 which a license must be secured from the Washington horse racing
7 commission, (ii) "amusement game" as defined in RCW 9.46.0201, or
8 (iii) any activity that is not subject to regulation by the gambling
9 commission.

10 (4) "Gross income of the business" does not include the monetary
11 value or actual cost of any prizes that are awarded, amounts paid to
12 players for winning wagers, accrual of prizes for progressive jackpot
13 contests, or repayment of amounts used to seed guaranteed progressive
14 jackpot prizes.

15 **Sec. 14.** RCW 82.04.286 and 2005 c 369 s 6 are each amended to
16 read as follows:

17 (1) (~~Upon every person engaging within this state in the~~
18 ~~business of conducting race meets for the conduct of which a license~~
19 ~~must be secured from the Washington horse racing commission; as to~~
20 ~~such persons, the amount of tax with respect to the business of~~
21 ~~parimutuel wagering is equal to the gross income of the business~~
22 ~~derived from parimutuel wagering multiplied by the rate of 0.1~~
23 ~~percent through June 30, 2006, and 0.13 percent thereafter. The money~~
24 ~~collected under this section shall)) The money collected under this
25 chapter on parimutuel wagering by a business conducting race meets
26 that require a license secured from the Washington horse racing
27 commission must be deposited in the problem gambling account created
28 in RCW 43.20A.892.~~

29 (2) For purposes of this section, "gross income of the business"
30 does not include amounts paid to players for winning wagers, or taxes
31 imposed or other distributions required under chapter 67.16 RCW.

32 (3) The tax imposed under this section is in addition to any tax
33 imposed under chapter 67.16 RCW.

34 **Sec. 15.** RCW 82.04.29001 and 2003 c 168 s 602 are each amended
35 to read as follows:

36 (1) The creation and distribution of custom software is a service
37 taxable under ((RCW 82.04.290(2))) section 1(2) of this act.
38 Duplication of the software for the same person, or by the same

1 person for its own use, does not change the character of the
2 software.

3 (2) The customization of prewritten computer software is a
4 service taxable under (~~RCW 82.04.290(2)~~) section 1(2) of this act.

5 **Sec. 16.** RCW 82.04.2907 and 2010 1st sp.s. c 23 s 107 are each
6 amended to read as follows:

7 (1) Upon every person engaging within this state in the business
8 of receiving income from royalties, the amount of tax (~~with respect~~
9 ~~to the business is equal to the gross income from royalties~~
10 ~~multiplied by the rate of 0.484 percent~~) must be determined using
11 the tax rate provided in section 1(1) of this act.

12 (2) For the purposes of this section, "~~gross~~) income from
13 royalties" means compensation for the use of intangible property,
14 including charges in the nature of royalties, regardless of where the
15 intangible property will be used. For purposes of this subsection,
16 "intangible property" includes copyrights, patents, licenses,
17 franchises, trademarks, trade names, and similar items. "Gross income
18 from royalties" does not include compensation for any natural
19 resource, the licensing of prewritten computer software to the end
20 user, or the licensing of digital goods, digital codes, or digital
21 automated services to the end user as defined in RCW 82.04.190(11).

22 **Sec. 17.** RCW 82.04.297 and 2010 c 111 s 303 are each amended to
23 read as follows:

24 (1) The provision of internet access is subject to tax under
25 (~~RCW 82.04.290(2)~~) section 1(2) of this act.

26 (2)(a) Except as provided in (b) of this subsection, "internet"
27 and "internet access" have the same meaning as those terms are
28 defined in the federal internet tax freedom act, Title 47 U.S.C. Sec.
29 151 note, as existing on July 1, 2009.

30 (b) "Internet access" does not include telecommunications service
31 purchased, used, or sold by a person that provides a service that
32 enables users to connect to the internet to access content,
33 information, or other services offered over the internet, to the
34 extent such telecommunications service is purchased, used, or sold:
35 (i) To provide such service; or (ii) to otherwise enable users to
36 access content, information, or other services offered over the
37 internet.

1 (3) Unless the context clearly requires otherwise, the
2 definitions in this section apply throughout this chapter.

3 **Sec. 18.** RCW 82.04.334 and 2010 1st sp.s. c 23 s 512 are each
4 amended to read as follows:

5 (1) This chapter does not apply to any ((sale)) selling of
6 standing timber excluded from the definition of "sale" in RCW
7 82.45.010(3).

8 (2) The definitions in ((RCW 82.04.260(11)) apply to this
9 section)) this subsection apply to this section.

10 (a) "Selling of standing timber" means the sale of timber apart
11 from the land, where the buyer is required to sever the timber within
12 thirty months from the date of the original contract, regardless of
13 the method of payment for the timber and whether title to the timber
14 transfers before, upon, or after severance.

15 (b) "Timber" means forest trees, standing or down, on privately
16 or publicly owned land. "Timber" does not include Christmas trees
17 that are cultivated by agricultural methods or short-rotation
18 hardwoods as defined in RCW 84.33.035.

19 **Sec. 19.** RCW 82.04.360 and 2010 1st sp.s. c 23 s 702 are each
20 amended to read as follows:

21 (1) This chapter does not apply to any person in respect to his
22 or her employment in the capacity of an employee or servant as
23 distinguished from that of an independent contractor. For the
24 purposes of this section, the definition of employee includes those
25 persons that are defined in section 3121(d)(3)(B) of the federal
26 internal revenue code of 1986, as amended through January 1, 1991.

27 (2) Until July 1, 2010, this chapter does not apply to amounts
28 received by an individual from a corporation as compensation for
29 serving as a member of that corporation's board of directors.
30 Beginning on July 1, 2010, such amounts are taxable under ((RCW
31 82.04.290(2)) section 1(2) of this act.

32 (3) A booth renter is an independent contractor for purposes of
33 this chapter. For purposes of this section, "booth renter" means any
34 person who:

35 (a) Performs cosmetology, barbering, esthetics, or manicuring
36 services for which a license is required under chapter 18.16 RCW; and

1 (b) Pays a fee for the use of salon or shop facilities and
2 receives no compensation or other consideration from the owner of the
3 salon or shop for the services performed.

4 **Sec. 20.** RCW 82.04.4291 and 1980 c 37 s 11 are each amended to
5 read as follows:

6 In computing tax there may be deducted from the measure of tax
7 amounts derived by a political subdivision of the state of Washington
8 from another political subdivision of the state of Washington as
9 compensation for services ~~((which))~~ that are within the purview of
10 ~~((RCW 82.04.290))~~ section 1(2) of this act.

11 **Sec. 21.** RCW 82.04.4295 and 1980 c 37 s 15 are each amended to
12 read as follows:

13 In computing tax there may be deducted from the measure of tax by
14 persons subject to payment of the tax on manufacturers pursuant to
15 ~~((RCW 82.04.240))~~ section 1(1) of this act, the value of articles to
16 the extent of manufacturing activities completed outside the United
17 States, if:

18 (1) Any additional processing of such articles in this state
19 consists of minor final assembly only; ~~((and))~~

20 (2) In the case of domestic manufacture of such articles, can be
21 and normally is done at the place of initial manufacture; ~~((and))~~

22 (3) The total cost of the minor final assembly does not exceed
23 two percent of the value of the articles; and

24 (4) The articles are sold and shipped outside the state.

25 **Sec. 22.** RCW 82.04.4324 and 1981 c 140 s 2 are each amended to
26 read as follows:

27 In computing tax there may be deducted from the measure of tax by
28 persons subject to payment of the tax on manufacturing under ~~((RCW~~
29 ~~82.04.240))~~ section 1(1) of this act, the value of articles to the
30 extent manufacturing activities are undertaken by an artistic or
31 cultural organization solely for the purpose of manufacturing
32 articles for use by the organization in displaying art objects or
33 presenting artistic or cultural exhibitions, performances, or
34 programs for attendance or viewing by the general public.

35 **Sec. 23.** RCW 82.04.433 and 2009 c 494 s 2 are each amended to
36 read as follows:

1 (1) In computing tax there may be deducted from the measure of
2 tax imposed under ((~~RCW 82.04.250 and 82.04.270~~)) section 1(1) of
3 this act on amounts derived from sales of fuel for consumption
4 outside the territorial waters of the United States, by vessels used
5 primarily in foreign commerce.

6 (2) The deduction in subsection (1) of this section does not
7 apply with respect to the tax imposed under ((~~RCW 82.04.240~~)) section
8 1(1) of this act on persons taxable as a manufacturer, whether the
9 value of the fuel under that tax is measured by the gross proceeds
10 derived from the sale thereof or otherwise under RCW 82.04.450.

11 **Sec. 24.** RCW 82.04.440 and 2011 c 2 s 205 are each amended to
12 read as follows:

13 (1) Every person engaged in activities that are subject to tax
14 under ((~~two or more provisions of RCW 82.04.230 through 82.04.298~~))
15 section 1 of this act, inclusive, is taxable under each provision
16 applicable to those activities.

17 (2) Persons taxable under RCW ((~~82.04.2909(2), 82.04.250,~~
18 ~~82.04.270, 82.04.294(2), or 82.04.260 (1)(b), (c), or (d), (4), (11),~~
19 ~~or (12)~~)) section 1(1) of this act with respect to selling products
20 in this state, including those persons who are also taxable under RCW
21 82.04.261, are allowed a credit against those taxes for any (a)
22 manufacturing taxes paid with respect to the manufacturing of
23 products so sold in this state, and/or (b) extracting taxes paid with
24 respect to the extracting of products so sold in this state or
25 ingredients of products so sold in this state. Extracting taxes taken
26 as credit under subsection (3) of this section may also be taken
27 under this subsection, if otherwise allowable under this subsection.
28 The amount of the credit may not exceed the tax liability arising
29 under this chapter with respect to the sale of those products.

30 (3) Persons taxable as manufacturers under ((~~RCW 82.04.240 or~~
31 ~~82.04.260 (1)(b) or (12), including those persons who are also~~
32 ~~taxable under RCW 82.04.261~~)) section 1(1) of this act, are allowed a
33 credit against those taxes for any extracting taxes paid with respect
34 to extracting the ingredients of the products so manufactured in this
35 state. The amount of the credit may not exceed the tax liability
36 arising under this chapter with respect to the manufacturing of those
37 products.

38 (4) Persons taxable under ((~~RCW 82.04.230, 82.04.240,~~
39 ~~82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (4),~~

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

13 (5) For the purpose of this section:

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

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

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

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

25 (c) "Manufacturing tax" means a gross receipts tax imposed on the
26 act or privilege of engaging in business as a manufacturer, and
27 includes (i) the taxes imposed in (~~RCW 82.04.240, 82.04.2404,~~
28 ~~82.04.2909(1), 82.04.260 (1), (2), (4), (11), and (12), and~~
29 ~~82.04.294(1))~~ section 1(1) of this act; (ii) the tax imposed under
30 RCW 82.04.261 on persons who are engaged in business as a
31 manufacturer; and (iii) similar gross receipts taxes paid to other
32 states.

33 (d) "Extracting tax" means a gross receipts tax imposed on the
34 act or privilege of engaging in business as an extractor, and
35 includes (i) the tax imposed on extractors in (~~RCW 82.04.230 and~~
36 ~~82.04.260(12))~~ section 1(1) of this act; (ii) the tax imposed under
37 RCW 82.04.261 on persons who are engaged in business as an extractor;
38 and (iii) similar gross receipts taxes paid to other states.

39 (e) "Business", "manufacturer", "extractor", and other terms used
40 in this section have the meanings given in RCW 82.04.020 through

1 ((~~82.04.212~~ [~~82.04.217~~])) 82.04.217, notwithstanding the use of those
2 terms in the context of describing taxes imposed by other states.

3 **Sec. 25.** RCW 82.04.460 and 2014 c 97 s 304 are each amended to
4 read as follows:

5 (1) Except as otherwise provided in this section, any person
6 earning apportionable income taxable under this chapter and also
7 taxable in another state must, for the purpose of computing tax
8 liability under this chapter, apportion to this state, in accordance
9 with RCW 82.04.462, that portion of the person's apportionable income
10 derived from business activities performed within this state.

11 (2) The department must by rule provide a method of apportioning
12 the apportionable income of financial institutions, where such
13 apportionable income is taxable under ((~~RCW 82.04.290~~)) section 1(2)
14 of this act. The rule adopted by the department must, to the extent
15 feasible, be consistent with the multistate tax commission's
16 recommended formula for the apportionment and allocation of net
17 income of financial institutions as existing on June 1, 2010, or such
18 subsequent date as may be provided by the department by rule,
19 consistent with the purposes of this section, except that:

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

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

26 (3) The department may by rule provide a method or methods of
27 apportioning or allocating gross income derived from sales of
28 telecommunications service and competitive telephone service taxed
29 under this chapter, if the gross proceeds of sales subject to tax
30 under this chapter do not fairly represent the extent of the
31 taxpayer's income attributable to this state. The rule must provide
32 for an equitable and constitutionally permissible division of the tax
33 base.

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

36 (a) "Apportionable income" means gross income of the business
37 generated from engaging in apportionable activities, including income
38 received from apportionable activities performed outside this state
39 if the income would be taxable under this chapter if received from

1 activities in this state, less the exemptions and deductions
2 allowable under this chapter. For purposes of this subsection,
3 "apportionable activities" means only those activities taxed under(~~(~~

4 ~~(i) RCW 82.04.255;~~

5 ~~(ii) RCW 82.04.260 (3), (5), (6), (7), (8), (9), (10), and (13);~~

6 ~~(iii) RCW 82.04.280(1)(e);~~

7 ~~(iv) RCW 82.04.285;~~

8 ~~(v) RCW 82.04.286;~~

9 ~~(vi) RCW 82.04.290;~~

10 ~~(vii) RCW 82.04.2907;~~

11 ~~(viii) RCW 82.04.2908;~~

12 ~~(ix) RCW 82.04.263, but only to the extent of any activity that~~
13 ~~would be taxable under any of the provisions enumerated under (a)(i)~~
14 ~~through (viii) of this subsection (4) if the tax classification in~~
15 ~~RCW 82.04.263 did not exist; and~~

16 ~~(x) RCW 82.04.260(14) and 82.04.280(1)(a), but only with respect~~
17 ~~to advertising)) section 1(2) of this act.~~

18 (b)(i) "Taxable in another state" means that the taxpayer is
19 subject to a business activities tax by another state on its income
20 received from engaging in apportionable activities; or the taxpayer
21 is not subject to a business activities tax by another state on its
22 income received from engaging in apportionable activities, but any
23 other state has jurisdiction to subject the taxpayer to a business
24 activities tax on such income under the substantial nexus standards
25 in RCW 82.04.067(1).

26 (ii) For purposes of this subsection (4)(b), "business activities
27 tax" and "state" have the same meaning as in RCW 82.04.462.

28 **Sec. 26.** RCW 82.04.462 and 2014 c 97 s 305 are each amended to
29 read as follows:

30 (1) The apportionable income of a person within the scope of RCW
31 82.04.460(1) is apportioned to Washington by multiplying its
32 apportionable income by the receipts factor. Persons who are subject
33 to tax under (~~more than one of the tax classifications enumerated in~~
34 ~~RCW 82.04.460(4)(a) (i) through (x)) section 1(2) of this act must
35 calculate a separate receipts factor for each tax classification that
36 the person is taxable under.~~

37 (2) For purposes of subsection (1) of this section, the receipts
38 factor is a fraction and is calculated as provided in subsections (3)
39 and (4) of this section and, for financial institutions, as provided

1 in the rule adopted by the department under the authority of RCW
2 82.04.460(2).

3 (3)(a) The numerator of the receipts factor is the total gross
4 income of the business of the taxpayer attributable to this state
5 during the tax year from engaging in an apportionable activity. The
6 denominator of the receipts factor is the total gross income of the
7 business of the taxpayer from engaging in an apportionable activity
8 everywhere in the world during the tax year.

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

12 (i) Where the customer received the benefit of the taxpayer's
13 service or, in the case of gross income from royalties, where the
14 customer used the taxpayer's intangible property. When a customer
15 receives the benefit of the taxpayer's services or uses the
16 taxpayer's intangible property in this and one or more other states
17 and the amount of gross income of the business that was received by
18 the taxpayer in return for the services received or intangible
19 property used by the customer in this state can be reasonably
20 determined by the taxpayer, such amount of gross income must be
21 attributed to this state.

22 (ii) If the customer received the benefit of the service or used
23 the intangible property in more than one state and if the taxpayer is
24 unable to attribute gross income of the business under the provisions
25 of (b)(i) of this subsection (3), gross income of the business must
26 be attributed to the state in which the benefit of the service was
27 primarily received or in which the intangible property was primarily
28 used.

29 (iii) If the taxpayer is unable to attribute gross income of the
30 business under the provisions of (b)(i) or (ii) of this subsection
31 (3), gross income of the business must be attributed to the state
32 from which the customer ordered the service or, in the case of
33 royalties, the office of the customer from which the royalty
34 agreement with the taxpayer was negotiated.

35 (iv) If the taxpayer is unable to attribute gross income of the
36 business under the provisions of (b)(i), (ii), or (iii) of this
37 subsection (3), gross income of the business must be attributed to
38 the state to which the billing statements or invoices are sent to the
39 customer by the taxpayer.

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

5 (vi) If the taxpayer is unable to attribute gross income of the
6 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
7 this subsection (3), gross income of the business must be attributed
8 to the state where the customer is located as indicated by the
9 customer's address: (A) Shown in the taxpayer's business records
10 maintained in the regular course of business; or (B) obtained during
11 consummation of the sale or the negotiation of the contract for
12 services or for the use of the taxpayer's intangible property,
13 including any address of a customer's payment instrument when readily
14 available to the taxpayer and no other address is available.

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

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

25 (c) Gross income of the business from engaging in an
26 apportionable activity must be excluded from the denominator of the
27 receipts factor if, in respect to such activity, at least some of the
28 activity is performed in this state, and the gross income is
29 attributable under (b) of this subsection (3) to a state in which the
30 taxpayer is not taxable. For purposes of this subsection (3)(c), "not
31 taxable" means that the taxpayer is not subject to a business
32 activities tax by that state, except that a taxpayer is taxable in a
33 state in which it would be deemed to have a substantial nexus with
34 that state under the standards in RCW 82.04.067(1) regardless of
35 whether that state imposes such a tax. "Business activities tax"
36 means a tax measured by the amount of, or economic results of,
37 business activity conducted in a state. The term includes taxes
38 measured in whole or in part on net income or gross income or
39 receipts. "Business activities tax" does not include a sales tax, use
40 tax, or a similar transaction tax, imposed on the sale or acquisition

1 of goods or services, whether or not denominated a gross receipts tax
2 or a tax imposed on the privilege of doing business.

3 (d) This subsection (3) does not apply to financial institutions
4 with respect to apportionable income taxable under (~~RCW 82.04.290~~)
5 section 1(2) of this act. Financial institutions must calculate the
6 receipts factor as provided in subsection (4) of this section and the
7 rule adopted by the department under the authority of RCW
8 82.04.460(2) with respect to apportionable income taxable under (~~RCW~~
9 ~~82.04.290. Financial institutions that are subject to tax under any~~
10 ~~other tax classification enumerated in RCW 82.04.460(4)(a) (i)~~
11 ~~through (v) and (vii) through (x) must calculate a separate receipts~~
12 ~~factor, as provided in this section, for each of the other tax~~
13 ~~classifications that the financial institution is taxable under)~~
14 section 1(2) of this act.

15 (4) A taxpayer may calculate the receipts factor for the current
16 tax year based on the most recent calendar year for which information
17 is available for the full calendar year. If a taxpayer does not
18 calculate the receipts factor for the current tax year based on
19 previous calendar year information as authorized in this subsection,
20 the business must use current year information to calculate the
21 receipts factor for the current tax year. In either case, a taxpayer
22 must correct the reporting for the current tax year when complete
23 information is available to calculate the receipts factor for that
24 year, but not later than October 31st of the following tax year.
25 Interest will apply to any additional tax due on a corrected tax
26 return. Interest must be computed and assessed as provided in RCW
27 82.32.050 and accrues until the additional taxes are paid. Penalties
28 as provided in RCW 82.32.090 will apply to any such additional tax
29 due only if the current tax year reporting is not corrected and the
30 additional tax is not paid by October 31st of the following tax year.
31 Interest as provided in RCW 82.32.060 will apply to any tax paid in
32 excess of that properly due on a return as a result of a taxpayer
33 using previous calendar year data or incomplete current-year data to
34 calculate the receipts factor.

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

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

39 (b) "State" means a state of the United States, the District of
40 Columbia, the Commonwealth of Puerto Rico, any territory or

1 possession of the United States, or any foreign country or political
2 subdivision of a foreign country.

3 **Sec. 27.** RCW 82.04.540 and 2006 c 301 s 1 are each amended to
4 read as follows:

5 (1) The provision of professional employer services by a
6 professional employer organization is taxable under ((RCW
7 82.04.290(2))) section 1(2) of this act.

8 ~~(2) ((A professional employer organization is allowed a deduction
9 from the gross income of the business derived from performing
10 professional employer services that is equal to the portion of the
11 fee charged to a client that represents the actual cost of wages and
12 salaries, benefits, workers' compensation, payroll taxes,
13 withholding, or other assessments paid to or on behalf of a covered
14 employee by the professional employer organization under a
15 professional employer agreement.~~

16 ~~(3))~~ For the purposes of this section, the following definitions
17 apply:

18 (a) "Client" means any person who enters into a professional
19 employer agreement with a professional employer organization. For
20 purposes of this subsection ((~~3~~)) (2)(a), "person" has the same
21 meaning as "buyer" in RCW 82.08.010.

22 (b) "Coemployer" means either a professional employer
23 organization or a client.

24 (c) "Coemployment relationship" means a relationship which is
25 intended to be an ongoing relationship rather than a temporary or
26 project-specific one, wherein the rights, duties, and obligations of
27 an employer which arise out of an employment relationship have been
28 allocated between coemployers pursuant to a professional employer
29 agreement and applicable state law. In such a coemployment
30 relationship:

31 (i) The professional employer organization is entitled to enforce
32 only such employer rights and is subject to only those obligations
33 specifically allocated to the professional employer organization by
34 the professional employer agreement or applicable state law;

35 (ii) The client is entitled to enforce those rights and obligated
36 to provide and perform those employer obligations allocated to such
37 client by the professional employer agreement and applicable state
38 law; and

1 (iii) The client is entitled to enforce any right and obligated
2 to perform any obligation of an employer not specifically allocated
3 to the professional employer organization by the professional
4 employer agreement or applicable state law.

5 (d) "Covered employee" means an individual having a coemployment
6 relationship with a professional employer organization and a client
7 who meets all of the following criteria: (i) The individual has
8 received written notice of coemployment with the professional
9 employer organization, and (ii) the individual's coemployment
10 relationship is pursuant to a professional employer agreement.
11 Individuals who are officers, directors, shareholders, partners, and
12 managers of the client are covered employees to the extent the
13 professional employer organization and the client have expressly
14 agreed in the professional employer agreement that such individuals
15 would be covered employees and provided such individuals meet the
16 criteria of this subsection and act as operational managers or
17 perform day-to-day operational services for the client.

18 (e) "Professional employer agreement" means a written contract by
19 and between a client and a professional employer organization that
20 provides:

21 (i) For the coemployment of covered employees; and

22 (ii) For the allocation of employer rights and obligations
23 between the client and the professional employer organization with
24 respect to the covered employees.

25 (f) "Professional employer organization" means any person engaged
26 in the business of providing professional employer services. The
27 following shall not be deemed to be professional employer
28 organizations or the providing of professional employer services for
29 purposes of this section:

30 (i) Arrangements wherein a person, whose principal business
31 activity is not entering into professional employer arrangements and
32 which does not hold itself out as a professional employer
33 organization, shares employees with a commonly owned company within
34 the meaning of section 414(b) and (c) of the Internal Revenue Code of
35 1986, as amended;

36 (ii) Independent contractor arrangements by which a person
37 assumes responsibility for the product produced or service performed
38 by such person or his or her agents and retains and exercises primary
39 direction and control over the work performed by the individuals
40 whose services are supplied under such arrangements; or

1 (iii) Providing staffing services.

2 (g) "Professional employer services" means the service of
3 entering into a coemployment relationship with a client in which all
4 or a majority of the employees providing services to a client or to a
5 division or work unit of a client are covered employees.

6 (h) "Staffing services" means services consisting of a person:

7 (i) Recruiting and hiring its own employees;

8 (ii) Finding other organizations that need the services of those
9 employees;

10 (iii) Assigning those employees on a temporary basis to perform
11 work at or services for the other organizations to support or
12 supplement the other organizations' workforces, or to provide
13 assistance in special work situations such as, but not limited to,
14 employee absences, skill shortages, seasonal workloads, or to perform
15 special assignments or projects, all under the direction and
16 supervision of the customer; and

17 (iv) Customarily attempting to reassign the employees to other
18 organizations when they finish each assignment.

19 NEW SECTION. **Sec. 28.** This act takes effect January 1, 2016.

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