
HOUSE BILL 3161

State of Washington 61st Legislature 2010 Regular Session

By Representatives Hasegawa, Chase, Appleton, Roberts, and Simpson

Read first time 02/01/10. Referred to Committee on Finance.

1 AN ACT Relating to community reinvestment of oil windfall profits;
2 amending RCW 43.325.020, 70.94.017, 82.04.230, 82.04.240, 82.04.240,
3 82.04.250, 82.04.250, 82.04.255, 82.04.270, 82.04.280, 82.04.280,
4 82.04.290, 39.35C.020, 39.35C.100, 82.03.130, and 82.03.140; amending
5 2009 c 461 s 9 (uncodified); reenacting and amending RCW 43.325.040;
6 adding a new title to the Revised Code of Washington to be codified as
7 Title 82A RCW; adding a new section to chapter 82.04 RCW; adding a new
8 section to chapter 39.35C RCW; adding a new section to chapter 43.21F
9 RCW; prescribing penalties; providing effective dates; providing a
10 contingent effective date; providing expiration dates; and providing
11 contingent expiration dates.

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

13 **PRIVILEGE TAX ON PETROLEUM BUSINESSES**

14 NEW SECTION. **Sec. 1.** FINDINGS AND INTENT. (1) The legislature
15 finds that in the process of mitigating a projected revenue shortfall
16 of nine billion dollars for the 2009-2011 biennium during the 2009
17 legislative session, it faces yet again in the 2010 legislative
18 session, only one year later, another projected revenue shortfall of at

1 least two billion six hundred million, for a total projected revenue
2 shortfall of eleven billion six hundred million dollars in the 2009-
3 2011 biennium. Many of the programs that were cut by the 2009
4 legislative session and that are under the threat of cuts during the
5 2010 legislative session, due to the current economic recession and the
6 fundamental inadequacies and unfairness of our current revenue
7 structure, threaten the health, safety, and security of a civilized
8 Washington state. Some examples of these cuts are: Dropping forty
9 thousand people off the Washington basic health plan; cutting early
10 childhood education for one thousand five hundred three-year-olds;
11 cutting all-day kindergarten for children living in poverty; cutting
12 assistance for thirty thousand disabled and unemployable persons;
13 cutting prescription drug assistance for eighty-five thousand seniors;
14 cutting maternity support for fifty thousand high-risk pregnant women;
15 cutting terminal care hospices for two thousand six hundred people;
16 cutting children's health care for sixteen thousand low-income kids;
17 making tuition costs out of reach for average income students; cutting
18 medicaid medical care; and cutting services for mental health care,
19 chemical dependency, home care, child care, public health, foster care,
20 tobacco use prevention, cancer screening, nursing home care, supporting
21 people with developmental disabilities, home visiting, universal
22 vaccinations, hospital care, affordable housing, adult day health, and
23 family planning, among many others.

24 (2) The legislature further finds that the federal stimulus money
25 and accounting procedures used to balance the 2009-2011 budget will
26 most probably not be available to mitigate any projected revenue
27 shortfall in the 2011-2013 budget. Therefore, it is in the best
28 interests of the people of Washington state to mitigate the devastating
29 effects of the aforementioned cuts by looking at new ways to raise
30 revenue for the short term, and to look at long-term solutions to the
31 state's revenue problems. This can be done while at the same time
32 securing fairness, adequacy, and stability within our state revenue
33 structure.

34 (3) It is the legislature's intent with this act to move the state
35 forward with two goals: (a) Raising immediate revenue to mitigate the
36 cruel impacts of draconian budget cuts; and (b) initiating inquiry and
37 proceedings toward long-term solutions to the state's unfair,
38 inadequate, and volatile revenue problems. These goals allow all the

1 people of the state to: Collectively share the financial
2 responsibilities of this recession so that everyone is pitching in to
3 get us all through the recession together; ensure that we leave no one
4 behind; and position our state for recovery by reforming our revenue
5 structure to encourage healthy economic development.

6 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
7 requires otherwise, the definitions in this section apply throughout
8 this title. Except as provided in this section, any term used in this
9 title has the same meaning as when used in a comparable context in the
10 internal revenue code.

11 (1) "Affiliated corporation" means a corporation that is a member
12 of a group of two or more corporations with a common owner or owners,
13 either corporate or noncorporate, when more than fifty percent of the
14 voting stock of each member corporation is directly or indirectly owned
15 by the common owner or owners or by one or more of the member
16 corporations.

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

20 (3) "Corporation" means any corporation as defined by the laws of
21 this state or organization of any kind treated as a corporation for tax
22 purposes under the laws of this state, wherever located, which if it
23 were doing business in this state would be a taxpayer. The business
24 conducted by a partnership which is directly or indirectly held by a
25 corporation is considered the business of the corporation to the extent
26 of the corporation's distributive share of the partnership income,
27 inclusive of guaranteed payments to the extent prescribed by rule.

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

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

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

1 (7) "Internal revenue code" means Title 26 of the United States
2 Code of 1986, and amendments thereto, as existing on January 1, 2010.

3 (8) "Person" means any individual, firm, partnership, general
4 partner of a partnership, limited liability company, registered limited
5 liability partnership, foreign limited liability partnership,
6 association, corporation (whether or not the corporation is, or would
7 be if doing business in this state, subject to tax under this title),
8 company, syndicate, estate, trust, business trust, trustee, trustee in
9 bankruptcy, receiver, executor, administrator, assignee, or
10 organization of any kind.

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

14 (10) "Petroleum business" means a corporation engaged in any of the
15 following activities: Exploration, production, refining,
16 manufacturing, processing, transportation, and marketing of oil and gas
17 or any commodity, product, or feedstock derived from oil or gas,
18 including petrochemicals.

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

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

24 (a) Is identified by the organization for economic cooperation and
25 development (OECD) as a tax haven or as having a harmful preferential
26 tax regime; or

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

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

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

36 (B) Has tax regime which lacks transparency. A tax regime lacks
37 transparency if the details of legislative, legal, or administrative
38 provisions are not open and apparent or are not consistently applied

1 among similarly situated taxpayers, or if the information needed by tax
2 authorities to determine a taxpayer's correct tax liability, such as
3 accounting records and underlying documentation, is not adequately
4 available;

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

8 (D) Explicitly or implicitly excludes the jurisdiction's resident
9 taxpayers from taking advantage of the tax regime's benefits or
10 prohibits enterprises that benefit from the regime from operating in
11 the jurisdiction's domestic market; or

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

16 (13) "Taxable income" means federal taxable income after making the
17 additions, subtractions, apportionments, and allocations provided under
18 this title.

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

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

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

1 (17) "United States" means the fifty states of the United States,
2 the District of Columbia, and United States' territories and
3 possessions.

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

9	If the gasoline price is:	The tax rate is:
10	Less than \$1.75	zero
11	Equal to or greater than \$1.75, but less than \$1.85	10%
12	Equal to or greater than \$1.85, but less than \$1.95	12%
13	Equal to or greater than \$1.95, but less than \$2.05	14%
14	Equal to or greater than \$2.05, but less than \$2.15	16%
15	Equal to or greater than \$2.15, but less than \$2.25	18%
16	Equal to or greater than \$2.25, but less than \$2.35	20%
17	Equal to or greater than \$2.35, but less than \$2.45	22%
18	Equal to or greater than \$2.45, but less than \$2.55	24%
19	Equal to or greater than \$2.55, but less than \$2.65	26%
20	Equal to or greater than \$2.65, but less than \$2.75	28%
21	Equal to or greater than \$2.75	30%

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

26 NEW SECTION. **Sec. 5.** TAXABLE INCOME MODIFICATIONS. In computing
27 taxable income, modifications shall be made to the taxpayer's federal
28 taxable income as required under this section, unless the modification
29 has the effect of duplicating an item of income or deduction.

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

33 (2) Add amounts that have been deducted in computing federal

1 taxable income to the extent the amounts have been carried back from
2 future taxable years.

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

5 (4) Add gross income that has been excluded under section 103 of
6 the internal revenue code in computing federal taxable income, except
7 gross income derived from obligations of the state of Washington or
8 political subdivisions of the state of Washington. However, the amount
9 added under this subsection must be reduced by any expenses incurred in
10 the production of amounts added under this subsection, to the extent
11 the expenses have not been deducted in computing federal taxable
12 income.

13 (5) Deduct gross income that the state is prohibited from taxing
14 under the Constitution or laws of the United States, to the extent the
15 gross income was included in computing federal taxable income.
16 However, the amount deducted under this subsection must be reduced by
17 any expenses incurred in the production of amounts subtracted under
18 this subsection, to the extent the expenses have been deducted in
19 computing federal taxable income.

20 (6) Deduct income attributable to activities subject to tax under
21 chapter 82.04 RCW for periods prior to the effective date of this
22 section, to the extent the gross income was included in computing
23 federal taxable income. However, the amount deducted under this
24 subsection must be reduced by any expenses incurred in the production
25 of such income, to the extent the expenses have been deducted in
26 computing federal taxable income.

27 (7) Deduct income attributable to activities subject to tax under
28 chapter 82.16 RCW, to the extent the gross income was included in
29 computing federal taxable income. However, the amount deducted under
30 this subsection must be reduced by any expenses incurred in the
31 production of such income to the extent the expenses have been deducted
32 in calculating federal taxable income.

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

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

3 (10) Add amounts that have been deducted as intangible drilling and
4 development expenses under Sec. 263(c) of the internal revenue code in
5 excess of amounts that would have been deducted had the expenses been
6 capitalized and depreciated.

7 (11) Add amounts deducted on the percentage depletion basis under
8 Sec. 613 of the internal revenue code in excess of the amounts that
9 would have been deducted had the expenses been determined using the
10 cost depletion basis under Sec. 612 of the internal revenue code.

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

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

21 (1) The taxable income must be multiplied by a fraction. The
22 numerator of the fraction is the number of days in the fractional
23 taxable year. The denominator of the fraction is the number of days in
24 the entire taxable year.

25 (2) The taxable income must be adjusted, in accordance with rules
26 of the department, so as to include only such income and be reduced
27 only by such deductions as can be clearly determined from the permanent
28 records of the taxpayer to be attributable to the fractional taxable
29 year.

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

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

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

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

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

25 (b) With respect to inclusion of associated apportionment factors
26 under this subsection, the department may require the exclusion of any
27 one or more of the factors, the inclusion of one or more additional
28 factors which will fairly represent the taxpayer's business activity in
29 this state, or the employment of any other method to effectuate a
30 proper reflection of the total amount of income subject to
31 apportionment and an equitable allocation and apportionment of the
32 taxpayer's income.

33 NEW SECTION. **Sec. 10.** DETERMINATION OF TAXABLE INCOME OR LOSS
34 USING COMBINED REPORT. The use of a combined report does not disregard
35 the separate identities of the taxpayer members of the combined group.
36 Each taxpayer member is responsible for tax based on its taxable income

1 or loss apportioned or allocated to this state, which includes, in
2 addition to other types of income, the taxpayer member's apportioned
3 share of business income of the combined group, where business income
4 of the combined group is calculated as a summation of the individual
5 net business incomes of all members of the combined group. A member's
6 net business income is determined by removing all but business income,
7 expense, and loss from that member's total income of the combined
8 group, as provided in this section.

9 (1)(a) Each taxpayer member is responsible for tax based on its
10 taxable income or loss apportioned or allocated to this state, which
11 includes:

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

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

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

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

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

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

28 (vii) Its net operating loss carryover or carryback. If the
29 taxable income computed under this section results in a loss for a
30 taxpayer member of the combined group, that taxpayer member has a state
31 net operating loss. Such net operating loss is applied as a deduction
32 in a prior or subsequent year only if that taxpayer has state source
33 positive net income, whether or not the taxpayer is or was a member of
34 a combined reporting group in the prior or subsequent year.

35 (b) Except where otherwise provided, no tax credit or
36 post-apportionment deduction earned by one member of the group, but not
37 fully used by or allowed to that member, may be used in whole or in
38 part by another member of the group or applied in whole or in part

1 against the total income of the combined group; and a
2 post-apportionment deduction carried over into a subsequent year as to
3 the member that incurred it, and available as a deduction to that
4 member in a subsequent year, will be considered in the computation of
5 the income of that member in the subsequent year, regardless of the
6 composition of that income as apportioned, allocated, or wholly within
7 this state.

8 (2) The taxpayer's share of the business income apportionable to
9 this state of each combined group of which it is a member is the
10 product of:

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

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

28 (3) The business income of a combined group is determined as
29 follows:

30 (a) From the total income of the combined group, determined under
31 (b) of this subsection, subtract any income, and add any expense or
32 loss, other than the business income, expense, or loss of the combined
33 group.

34 (b) Except as otherwise provided, the total income of the combined
35 group is the sum of the incomes, separately determined, of each member
36 of the combined group. The income of each member of the combined group
37 must be determined as follows:

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

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

9 (I) A profit and loss statement shall be prepared for each foreign
10 branch or corporation in the currency in which the books of account of
11 the branch or corporation are regularly maintained.

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

16 (III) Adjustments must be made to the profit and loss statement to
17 conform it to the tax accounting standards required by the department
18 by rule.

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

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

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

1 (iii) If a unitary business includes income from a partnership, the
2 income to be included in the total income of the combined group must be
3 the member of the combined group's direct and indirect distributive
4 share of the partnership's unitary business income.

5 (iv) All dividends paid by one to another of the members of the
6 combined group shall, to the extent those dividends are paid out of the
7 earnings and profits of the unitary business included in the combined
8 report, in the current or an earlier year, be eliminated from the
9 income of the recipient. This provision does not apply to dividends
10 received from members of the unitary business which are not a part of
11 the combined group.

12 (v) Except as otherwise provided by rule, business income from an
13 intercompany transaction between members of the same combined group
14 shall be deferred in a manner similar to 26 C.F.R. 1.1502-13. Upon the
15 occurrence of any of the following events, deferred business income
16 resulting from an intercompany transaction between members of a
17 combined group must be restored to the income of the seller, and is
18 apportioned as business income earned immediately before the event:

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

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

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

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

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

29 (vi) A charitable expense incurred by a member of a combined group
30 shall, to the extent allowable as a deduction under internal revenue
31 code section 170, be subtracted first from the business income of the
32 combined group (subject to the income limitations of that section
33 applied to the entire business income of the group), and any remaining
34 amount shall then be treated as a nonbusiness expense allocable to the
35 member that incurred the expense (subject to the income limitations of
36 that section applied to the nonbusiness income of that specific
37 member). Any charitable deduction disallowed under the foregoing rule,
38 but allowed as a carryover deduction in a subsequent year, shall be

1 treated as originally incurred in the subsequent year by the same
2 member, and the rules of this section shall apply in the subsequent
3 year in determining the allowable deduction in that year.

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

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

16 (B) Each taxpayer member must then net its apportioned business
17 gain or loss for all classes, including any such apportioned business
18 gain and loss from other combined groups, against the taxpayer member's
19 nonbusiness gain and loss for all classes allocated to this state,
20 using the rules of internal revenue code sections 1231 and 1222,
21 without regard to any of the taxpayer member's gains or losses from the
22 sale or exchange of capital assets, internal revenue code section 1231
23 property, and involuntary conversions which are nonbusiness items
24 allocated to another state.

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

29 (D) Any resulting state source loss of a member that is subject to
30 the limitations of internal revenue code section 1211 must be carried
31 forward by that member, and shall be treated as state source short-term
32 capital loss incurred by that member for the year for which the
33 carryover applies.

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

1 NEW SECTION. **Sec. 11.** DESIGNATION OF SURETY. As a filing
2 convenience, and without changing the respective liability of the group
3 members, members of a combined reporting group may annually elect to
4 designate one taxpayer member of the combined group to file a single
5 return in the form and manner prescribed by the department, in lieu of
6 filing their own respective returns, provided that the taxpayer
7 designated to file the single return consents to act as surety with
8 respect to the tax liability of all other taxpayers properly included
9 in the combined report, and agrees to act as agent on behalf of those
10 taxpayers for the year of the election for tax matters relating to the
11 combined report for that year. If for any reason the surety is
12 unwilling or unable to perform its responsibilities, tax liability may
13 be assessed against the taxpayer members.

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

22 (a) The entire income and apportionment factors of any member
23 incorporated in the United States or formed under the laws of any
24 state, the District of Columbia, or any territory or possession of the
25 United States;

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

30 (c) The entire income and apportionment factors of any member which
31 is a domestic international sales corporation as described in internal
32 revenue code sections 991 to 994, inclusive; a foreign sales
33 corporation as described in internal revenue code sections 921 to 927,
34 inclusive; or any member which is an export trade corporation, as
35 described in internal revenue code sections 970 to 971, inclusive;

36 (d) Any member not described in (a) through (c) of this subsection,
37 inclusive, shall include the portion of its income derived from or

1 attributable to sources within the United States, as determined under
2 the internal revenue code without regard to federal treaties, and its
3 apportionment factors related thereto;

4 (e) Any member that is a "controlled foreign corporation," as
5 defined in internal revenue code section 957, to the extent of the
6 income of that member that is defined in section 952 of subpart F of
7 the internal revenue code ("subpart F income") not excluding lower-tier
8 subsidiaries' distributions of such income which were previously taxed,
9 determined without regard to federal treaties, and the apportionment
10 factors related to that income; any item of income received by a
11 controlled foreign corporation is excluded if such income was subject
12 to an effective rate of income tax imposed by a foreign country greater
13 than ninety percent of the maximum rate of tax specified in internal
14 revenue code section 11;

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

20 (g) The entire income and apportionment factors of any member that
21 is doing business in a tax haven, where "doing business in a tax haven"
22 is defined as being engaged in activity sufficient for that tax haven
23 jurisdiction to impose a tax under United States constitutional
24 standards. If the member's business activity within a tax haven is
25 entirely outside the scope of the laws, provisions, and practices that
26 cause the jurisdiction to meet the criteria established in section
27 2(12) of this act, the activity of the member must be treated as not
28 having been conducted in a tax haven.

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

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

1 (c) In the discretion of the department, a water's-edge election
2 may be disregarded in part or in whole, and the income and
3 apportionment factors of any member of the taxpayer's unitary group may
4 be included in the combined report without regard to the provisions of
5 this section, if any member of the unitary group fails to comply with
6 any provision of this title or if a person otherwise not included in
7 the water's-edge combined group was availed of with a substantial
8 objective of avoiding state income tax.

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

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

23 (2) The provisions of the internal revenue code relating to the
24 determination of reporting periods and due dates of payments of
25 estimated tax apply to the estimated tax payments due under this
26 section.

27 (3) The amount of the estimated tax is the annualized tax divided
28 by the number of months in the reporting period. No estimated tax
29 shall be due if the annualized tax is less than five hundred dollars.
30 The provisions of RCW 82.32.050 and 82.32.090 apply to underpayments of
31 estimated tax but do not apply to underpayments if the tax remitted to
32 the department under this title is either ninety percent of the tax
33 shown on the return or one hundred percent of the tax shown on the
34 previous year's tax return.

35 (4) For purposes of this section, the annualized tax is the
36 taxpayer's projected tax liability for the taxable year as computed

1 under section 6654 of the internal revenue code and the regulations
2 thereunder.

3 NEW SECTION. **Sec. 14.** METHOD OF ACCOUNTING. (1) A taxpayer's
4 method of accounting for purposes of the tax imposed under this title
5 shall be the same as the taxpayer's method of accounting for federal
6 income tax purposes. If no method of accounting has been regularly
7 used by a taxpayer for federal income tax purposes or if the method
8 used does not clearly reflect income, tax due under this title is
9 computed by a method of accounting that in the opinion of the
10 department fairly reflects income.

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

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

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

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

1 adjustment shall begin at the later of thirty days following the final
2 determination of the adjustment or the date of the filing of the
3 corrected return.

4 NEW SECTION. **Sec. 16.** DUE DATE FOR FILING A RETURN--EXTENSIONS--
5 INTEREST AND PENALTIES. The due date of a return required to be filed
6 with the department shall be the due date of the federal income tax
7 return or informational return for federal income tax purposes. The
8 department has the authority to grant extensions of times by which
9 returns required to be filed by this title may be submitted. The
10 department also has the authority to grant extensions of time to pay
11 tax with regard to taxes imposed by this title. Interest at the rate
12 as specified in RCW 82.32.050 accrues during any extension period and
13 the interest and penalty provisions of chapter 82.32 RCW apply to late
14 payments and deficiencies. Notwithstanding the limitation of RCW
15 82.32.090, in the case of the late filing of an informational return,
16 there is imposed a penalty the amount of which must be established by
17 the department by rule. The penalty may not exceed fifty dollars per
18 month for a maximum of ten months. RCW 82.32.105 applies to this
19 section.

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

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

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

5 (a) Liability of transferees;

6 (b) Time and manner of making returns, extensions of time for
7 filing returns, verification of returns, and the time when a return is
8 deemed filed.

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

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

15 NEW SECTION. **Sec. 20.** RULES. The department may adopt rules
16 under chapter 34.05 RCW for the administration and enforcement of this
17 title. The rules, to the extent possible without being inconsistent
18 with this title, must follow the internal revenue code and the
19 regulations and rulings of the United States department of the treasury
20 with respect to the federal income tax. The department may adopt as a
21 part of these rules any portions of the internal revenue code and
22 treasury department regulations and rulings, in whole or in part.

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

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

29 (3) Any person who knowingly fails to pay tax, pay estimated tax,
30 make returns, keep records, or supply information, as required under
31 this title, is guilty of a gross misdemeanor as provided in chapter
32 9A.20 RCW.

33 NEW SECTION. **Sec. 22.** CREATION OF RESERVE ACCOUNT. (1) The
34 energy and transportation reserve account is created in the state

1 treasury. All receipts from the tax imposed in this chapter must be
2 deposited into the account. Money in the account may be spent only
3 after appropriation. Expenditures from the account must be used only
4 for the purposes specified in subsection (3) of this section.

5 (2) Beginning January 1, 2012, and every six months thereafter, tax
6 proceeds in an amount determined under this subsection (2) must be
7 distributed in the manner provided in subsection (3) of this section.
8 The amount of proceeds to be distributed equals the sum of: (a) The
9 lesser of the amount in the account on the day prior to the date of
10 distribution or two hundred fifty million dollars; and (b) the amount
11 by which the balance in the account on the day prior to the date of
12 distribution, reduced by the amount determined under (a) of this
13 subsection, exceeds five hundred million dollars. The percentage
14 amounts in subsection (3) of this section must be adjusted ratably as
15 the distributions expire in subsection (3)(a) and (b) of this section.

16 (3) The amount of proceeds subject to distribution, as determined
17 under subsection (2) of this section, must be distributed as follows:

18 (a) Until July 1, 2018, eighteen percent must be deposited into the
19 energy freedom account created in RCW 43.325.040;

20 (b) Until July 1, 2022, one and four-fifths percent must be
21 deposited into the segregated subaccount of the air pollution control
22 account specified in RCW 70.94.017;

23 (c) Three and three-fifths percent must be deposited into the
24 general fund for distribution to state agencies, as provided by
25 legislative appropriation, to pay for agency heating and transportation
26 costs;

27 (d) Three and three-fifths percent must be deposited into the
28 general fund for distribution to school districts, as provided by
29 legislative appropriation, to pay for heating and pupil transportation
30 costs;

31 (e) One and four-fifths percent must be deposited into the energy
32 efficiency construction account created in RCW 39.35C.100 for the
33 construction of energy conservation projects;

34 (f) Forty-five percent must be distributed to a regional transit
35 authority under chapter 81.112 RCW, as provided by legislative
36 appropriation. The authority must use the money for a commuter rail
37 system or rail fixed guideway system that provides service to all
38 counties that comprise the regional transit authority;

1 (g) Thirteen and one-half percent must be distributed to the
2 department of community, trade, and economic development for the
3 purposes specified in section 40 of this act; and

4 (h) Twelve and seven-tenths percent must be deposited into the
5 general fund.

6 **DISTRIBUTION: ENERGY FREEDOM PROGRAM**

7 **Sec. 23.** RCW 43.325.020 and 2009 c 451 s 3 are each amended to
8 read as follows:

9 (1) The energy freedom program is established within the
10 department. The director may establish policies and procedures
11 necessary for processing, reviewing, and approving applications made
12 under this chapter.

13 (2) When reviewing applications submitted under this program, the
14 director (~~shall~~) must consult with those agencies and other public
15 entities having expertise and knowledge to assess the technical and
16 business feasibility of the project and probability of success. These
17 agencies may include, but are not limited to, Washington State
18 University, the University of Washington, the department of ecology,
19 the department of natural resources, the department of agriculture, the
20 department of general administration, local clean air authorities, the
21 Washington state conservation commission, and the clean energy
22 leadership council created in section 2, chapter 318, Laws of 2009.

23 (3) Except as provided in subsections (4) and (5) of this section,
24 the director, in cooperation with the department of agriculture, may
25 approve an application only if the director finds:

26 (a) The project will convert farm products, wastes, cellulose, or
27 biogas directly into electricity or biofuel or other coproducts
28 associated with such conversion;

29 (b) The project demonstrates technical feasibility and directly
30 assists in moving a commercially viable project into the marketplace
31 for use by Washington state citizens;

32 (c) The facility will produce long-term economic benefits to the
33 state, a region of the state, or a particular community in the state;

34 (d) The project does not require continuing state support;

35 (e) The assistance will result in new jobs, job retention, or
36 higher incomes for citizens of the state;

1 (f) The state is provided an option under the assistance agreement
2 to purchase a portion of the fuel or feedstock to be produced by the
3 project, exercisable by the department of general administration;

4 (g) The project will increase energy independence or diversity for
5 the state;

6 (h) The project will use feedstocks produced in the state, if
7 feasible, except this criterion does not apply to the construction of
8 facilities used to distribute and store fuels that are produced from
9 farm products or wastes;

10 (i) Any product produced by the project will be suitable for its
11 intended use, will meet accepted national or state standards, and will
12 be stored and distributed in a safe and environmentally sound manner;

13 (j) The application provides for adequate reporting or disclosure
14 of financial and employment data to the director, and permits the
15 director to require an annual or other periodic audit of the project
16 books; and

17 (k) For research and development projects, the application has been
18 independently reviewed by a peer review committee as defined in RCW
19 43.325.010 and the findings delivered to the director.

20 (4) When reviewing an application for a refueling project, the
21 coordinator may award a grant or a loan to an applicant if the director
22 finds:

23 (a) The project will offer alternative fuels to the motoring
24 public;

25 (b) The project does not require continued state support;

26 (c) The project is located within a green highway zone as defined
27 in RCW 43.325.010;

28 (d) The project will contribute towards an efficient and adequately
29 spaced alternative fuel refueling network along the green highways
30 designated in RCW 47.17.020, 47.17.135, and 47.17.140; and

31 (e) The project will result in increased access to alternative
32 fueling infrastructure for the motoring public along the green highways
33 designated in RCW 47.17.020, 47.17.135, and 47.17.140.

34 (5) When reviewing an application for energy efficiency
35 improvements, renewable energy improvements, or innovative energy
36 technology, the director may award a grant or a loan to an applicant if
37 the director finds:

1 (a) The project or program will result in increased access for the
2 public, state and local governments, and businesses to energy
3 efficiency improvements, renewable energy improvements, or innovative
4 energy technologies;

5 (b) The project or program demonstrates technical feasibility and
6 directly assists in moving a commercially viable project into the
7 marketplace for use by Washington state citizens;

8 (c) The project or program does not require continued state
9 support; or

10 (d) The federal government has provided funds with a limited time
11 frame for use for energy independence and security, energy efficiency,
12 renewable energy, innovative energy technologies, or conservation.

13 (6)(a) The director may approve a project application for
14 assistance under subsection (3) of this section up to (~~five~~) fifteen
15 million dollars. In no circumstances (~~shall~~) may this assistance
16 constitute more than fifty percent of the total project cost.

17 (b) The director may approve a refueling project application for a
18 grant or a loan under subsection (4) of this section up to fifty
19 thousand dollars. In no circumstances (~~shall~~) may a grant or a loan
20 award constitute more than fifty percent of the total project cost.

21 (7) The director (~~shall~~) must enter into agreements with approved
22 applicants to fix the terms and rates of the assistance to minimize the
23 costs to the applicants, and to encourage establishment of a viable
24 bioenergy or biofuel industry, or a viable energy efficiency, renewable
25 energy, or innovative energy technology industry. The agreement
26 (~~shall~~) must include provisions to protect the state's investment,
27 including a requirement that a successful applicant enter into
28 contracts with any partners that may be involved in the use of any
29 assistance provided under this program, including services, facilities,
30 infrastructure, or equipment. Contracts with any partners (~~shall~~)
31 must become part of the application record.

32 (8) The director may defer any payments for up to twenty-four
33 months or until the project starts to receive revenue from operations,
34 whichever is sooner.

35 **Sec. 24.** RCW 43.325.040 and 2009 c 564 s 942 and 2009 c 451 s 5
36 are each reenacted and amended to read as follows:

37 (1) The energy freedom account is created in the state treasury.

1 All receipts from appropriations made to the account, distributions to
2 the account under section 22 of this act, and any loan payments of
3 principal and interest derived from loans made under the energy freedom
4 account must be deposited into the account. Moneys in the account may
5 be spent only after appropriation. Expenditures from the account may
6 be used only for financial assistance for further funding for projects
7 consistent with this chapter or otherwise authorized by the
8 legislature.

9 (2) The green energy incentive account is created in the state
10 treasury as a subaccount of the energy freedom account. All receipts
11 from appropriations made to the green energy incentive account
12 (~~shall~~) must be deposited into the account, and may be spent only
13 after appropriation. Expenditures from the account may be used only
14 for:

- 15 (a) Refueling projects awarded under this chapter;
- 16 (b) Pilot projects for plug-in hybrids, including grants provided
17 for the electrification program set forth in RCW 43.325.110; and
- 18 (c) Demonstration projects developed with state universities as
19 defined in RCW 28B.10.016 and local governments that result in the
20 design and building of a hydrogen vehicle fueling station.

21 (3)(a) The energy recovery act account is created in the state
22 treasury. State and federal funds may be deposited into the account
23 and any loan payments of principal and interest derived from loans made
24 from the energy recovery act account must be deposited into the
25 account. Moneys in the account may be spent only after appropriation.

26 (b) Expenditures from the account may be used only for loans, loan
27 guarantees, and grants that encourage the establishment of innovative
28 and sustainable industries for renewable energy and energy efficiency
29 technology, including but not limited to:

- 30 (i) Renewable energy projects or programs that require interim
31 financing to complete project development and implementation;
- 32 (ii) Companies with innovative, near-commercial or commercial,
33 clean energy technology; and
- 34 (iii) Energy efficiency technologies that have a viable repayment
35 stream from reduced utility costs.

36 (c) The director (~~shall~~) must establish policies and procedures
37 for processing, reviewing, and approving applications for funding under

1 this section. When developing these policies and procedures, the
2 department must consider the clean energy leadership strategy developed
3 under section 2, chapter 318, Laws of 2009.

4 (d) The director (~~shall~~) must enter into agreements with approved
5 applicants to fix the term and rates of funding provided from this
6 account.

7 (e) The policies and procedures of this subsection (3) do not apply
8 to assistance awarded for projects under RCW 43.325.020(3).

9 (4) Any state agency receiving funding from the energy freedom
10 account is prohibited from retaining greater than three percent of any
11 funding provided from the energy freedom account for administrative
12 overhead or other deductions not directly associated with conducting
13 the research, projects, or other end products that the funding is
14 designed to produce unless this provision is waived in writing by the
15 director.

16 (5) Any university, institute, or other entity that is not a state
17 agency receiving funding from the energy freedom account is prohibited
18 from retaining greater than fifteen percent of any funding provided
19 from the energy freedom account for administrative overhead or other
20 deductions not directly associated with conducting the research,
21 projects, or other end products that the funding is designed to
22 produce.

23 (6) Subsections (2), (4), and (5) of this section do not apply to
24 assistance awarded for projects under RCW 43.325.020(3).

25 (7) During the 2009-2011 fiscal biennium, the legislature may
26 transfer from the energy freedom account to the state general fund such
27 amounts as reflect the excess fund balance of the account.

28 **DISTRIBUTION: RETROFIT OF SCHOOL BUSES**
29 **AND LOCAL GOVERNMENT FLEETS**

30 **Sec. 25.** RCW 70.94.017 and 2007 c 348 s 102 are each amended to
31 read as follows:

32 (1) Money deposited in the segregated subaccount of the air
33 pollution control account under RCW 46.68.020(2) (~~shall~~) must be
34 distributed as follows:

35 (a) Eighty-five percent (~~shall~~) must be distributed to air
36 pollution control authorities created under this chapter. The money

1 must be distributed in direct proportion with the amount of fees
2 imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are
3 collected within the boundaries of each authority. However, an amount
4 in direct proportion with those fees collected in counties for which no
5 air pollution control authority exists must be distributed to the
6 department.

7 (b) The remaining fifteen percent (~~shall~~) must be distributed to
8 the department.

9 (2) Money distributed to air pollution control authorities and the
10 department under subsection (1) of this section must be used as
11 follows:

12 (a) Eighty-five percent of the money received by an air pollution
13 control authority or the department is available on a priority basis to
14 retrofit school buses with exhaust emission control devices or to
15 provide funding for fueling infrastructure necessary to allow school
16 bus fleets to use alternative, cleaner fuels. In addition, the
17 director of ecology or the air pollution control officer may direct
18 funding under this section for other publicly or privately owned diesel
19 equipment if the director of ecology or the air pollution control
20 officer finds that funding for other publicly or privately owned diesel
21 equipment will provide public health benefits and further the purposes
22 of this chapter.

23 (b) The remaining fifteen percent may be used by the air pollution
24 control authority or department to reduce transportation-related air
25 contaminant emissions and clean up air pollution, or reduce and monitor
26 toxic air contaminants.

27 (3) One-half of the money deposited in the segregated subaccount of
28 the air pollution control account under section 22 of this act shall be
29 distributed to air pollution control authorities and the remainder
30 shall be distributed to the department. Air pollution control
31 authorities and the department must use the money to retrofit school
32 buses with exhaust emission control devices or to provide funding for
33 fueling infrastructure necessary to allow school bus fleets to use
34 alternative, cleaner fuels. In addition, the director of ecology or an
35 air pollution control officer may direct funding under this section for
36 other publicly owned diesel equipment if the director or an officer
37 finds that funding for other publicly owned diesel equipment will

1 provide public health benefits and further the purposes of this
2 chapter.

3 (4) Money in the air pollution control account may be spent by the
4 department only after appropriation.

5 ((+4)) (5) This section expires July 1, 2020.

6 **DISTRIBUTION: REDUCTION OF BUSINESS AND OCCUPATION TAX**

7 **Sec. 26.** RCW 82.04.230 and 2006 c 300 s 5 are each amended to read
8 as follows:

9 Upon every person engaging within this state in business as an
10 extractor, except persons taxable as an extractor under any other
11 provision in this chapter; as to such persons, the amount of the tax
12 with respect to such business shall be equal to the value of the
13 products, including byproducts, extracted for sale or for commercial or
14 industrial use, multiplied by the rate of ((0.484)) 0.4719 percent.

15 The measure of the tax is the value of the products, including
16 byproducts, so extracted, regardless of the place of sale or the fact
17 that deliveries may be made to points outside the state.

18 **Sec. 27.** RCW 82.04.240 and 2004 c 24 s 4 are each amended to read
19 as follows:

20 Upon every person engaging within this state in business as a
21 manufacturer, except persons taxable as manufacturers under other
22 provisions of this chapter; as to such persons, the amount of the tax
23 with respect to such business ((shall be)) is equal to the value of the
24 products, including byproducts, manufactured, multiplied by the rate of
25 ((0.484)) 0.4719 percent.

26 The measure of the tax is the value of the products, including
27 byproducts, so manufactured regardless of the place of sale or the fact
28 that deliveries may be made to points outside the state.

29 **Sec. 28.** RCW 82.04.240 and 2003 c 149 s 3 are each amended to read
30 as follows:

31 (1) Upon every person engaging within this state in business as a
32 manufacturer, except persons taxable as manufacturers under other
33 provisions of this chapter; as to such persons, the amount of the tax

1 with respect to such business (~~shall be~~) is equal to the value of the
2 products, including byproducts, manufactured, multiplied by the rate of
3 (~~0.484~~) 0.4719 percent.

4 (2) Upon every person engaging within this state in the business of
5 manufacturing semiconductor materials, as to such persons, the amount
6 of tax with respect to such business (~~shall~~), in the case of
7 manufacturers, be equal to the value of the product manufactured, or,
8 in the case of processors for hire, (~~be~~) is equal to the gross income
9 of the business, multiplied by the rate of 0.275 percent. For the
10 purposes of this subsection "semiconductor materials" means silicon
11 crystals, silicon ingots, raw polished semiconductor wafers, compound
12 semiconductors, integrated circuits, and microchips. This subsection
13 (2) expires twelve years after the effective date of this act.

14 (3) The measure of the tax is the value of the products, including
15 byproducts, so manufactured regardless of the place of sale or the fact
16 that deliveries may be made to points outside the state.

17 **Sec. 29.** RCW 82.04.250 and 2008 c 81 s 5 are each amended to read
18 as follows:

19 (1) Upon every person engaging within this state in the business of
20 making sales at retail, except persons taxable as retailers under other
21 provisions of this chapter, as to such persons, the amount of tax with
22 respect to such business shall be equal to the gross proceeds of sales
23 of the business, multiplied by the rate of (~~0.471~~) 0.4592 percent.

24 (2) Upon every person engaging within this state in the business of
25 making sales at retail that are exempt from the tax imposed under
26 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
27 82.08.0263, except persons taxable under RCW 82.04.260(11) or
28 subsection (3) of this section, as to such persons, the amount of tax
29 with respect to such business (~~shall be~~) is equal to the gross
30 proceeds of sales of the business, multiplied by the rate of 0.484
31 percent.

32 (3) Upon every person classified by the federal aviation
33 administration as a federal aviation regulation part 145 certificated
34 repair station and that is engaging within this state in the business
35 of making sales at retail that are exempt from the tax imposed under
36 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or

1 82.08.0263, as to such persons, the amount of tax with respect to such
2 business (~~shall be~~) is equal to the gross proceeds of sales of the
3 business, multiplied by the rate of .2904 percent.

4 **Sec. 30.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
5 as follows:

6 (1) Upon every person engaging within this state in the business of
7 making sales at retail, except persons taxable as retailers under other
8 provisions of this chapter, as to such persons, the amount of tax with
9 respect to such business (~~shall be~~) is equal to the gross proceeds of
10 sales of the business, multiplied by the rate of (~~0.471~~) 0.4592
11 percent.

12 (2) Upon every person engaging within this state in the business of
13 making sales at retail that are exempt from the tax imposed under
14 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
15 82.08.0263, except persons taxable under RCW 82.04.260(11), as to such
16 persons, the amount of tax with respect to such business (~~shall be~~)
17 is equal to the gross proceeds of sales of the business, multiplied by
18 the rate of 0.484 percent.

19 **Sec. 31.** RCW 82.04.255 and 1997 c 7 s 1 are each amended to read
20 as follows:

21 (1) Upon every person engaging within the state as a real estate
22 broker; as to such persons, the amount of the tax with respect to such
23 business (~~shall be~~) is equal to the gross income of the business,
24 multiplied by the rate of (~~1.5~~) 1.4625 percent.

25 (2)(a) Except as provided otherwise in this subsection, the measure
26 of the tax on real estate commissions earned by the real estate broker
27 (~~shall be~~) is the gross commission earned by the particular real
28 estate brokerage office including that portion of the commission paid
29 to salesmen or associate brokers in the same office on a particular
30 transaction(~~:- PROVIDED, HOWEVER, That~~)).

31 (b) Where a real estate commission is divided between an
32 originating brokerage office and a cooperating brokerage office on a
33 particular transaction, each brokerage office (~~shall~~) must pay the
34 tax only upon their respective shares of said commission(~~:- AND~~
35 PROVIDED FURTHER, That)).

1 (c) Where the brokerage office has paid the tax as provided
2 (~~herein~~) in this section, salesmen or associate brokers within the
3 same brokerage office (~~shall~~) may not be required to pay a similar
4 tax upon the same transaction.

5 **Sec. 32.** RCW 82.04.270 and 2004 c 24 s 5 are each amended to read
6 as follows:

7 Upon every person engaging within this state in the business of
8 making sales at wholesale, except persons taxable as wholesalers under
9 other provisions of this chapter; as to such persons, the amount of tax
10 with respect to such business (~~shall be~~) is equal to the gross
11 proceeds of sales of such business multiplied by the rate of (~~0.484~~)
12 0.4719 percent.

13 **Sec. 33.** RCW 82.04.280 and 2009 c 461 s 2 are each amended to read
14 as follows:

15 (1) Upon every person engaging within this state in the business
16 of: (~~(1)~~) (a) Printing materials other than newspapers, and of
17 publishing periodicals or magazines; (~~(2)~~) (b) building, repairing or
18 improving any street, place, road, highway, easement, right-of-way,
19 mass public transportation terminal or parking facility, bridge,
20 tunnel, or trestle which is owned by a municipal corporation or
21 political subdivision of the state or by the United States and which is
22 used or to be used, primarily for foot or vehicular traffic including
23 mass transportation vehicles of any kind and including any
24 readjustment, reconstruction or relocation of the facilities of any
25 public, private or cooperatively owned utility or railroad in the
26 course of such building, repairing or improving, the cost of which
27 readjustment, reconstruction, or relocation, is the responsibility of
28 the public authority whose street, place, road, highway, easement,
29 right-of-way, mass public transportation terminal or parking facility,
30 bridge, tunnel, or trestle is being built, repaired or improved; (~~(3)~~
31 ~~extracting for hire or processing for hire, except persons taxable as~~
32 ~~extractors for hire or processors for hire under another section of~~
33 ~~this chapter;~~ ~~(4)~~) (c) operating a cold storage warehouse or storage
34 warehouse, but not including the rental of cold storage lockers;
35 (~~(5)~~) (d) representing and performing services for fire or casualty
36 insurance companies as an independent resident managing general agent

1 (~~licensed under the provisions of RCW 48.05.310~~); ~~((+6+))~~ (e) radio
2 and television broadcasting, excluding network, national and regional
3 advertising computed as a standard deduction based on the national
4 average thereof as annually reported by the federal communications
5 commission, or in lieu thereof by itemization by the individual
6 broadcasting station, and excluding that portion of revenue represented
7 by the out-of-state audience computed as a ratio to the station's total
8 audience as measured by the 100 micro-volt signal strength and delivery
9 by wire, if any; ~~((+7+))~~ (f) engaging in activities which bring a
10 person within the definition of consumer contained in RCW 82.04.190(6);
11 as to such persons, the amount of tax on such business is equal to the
12 gross income of the business multiplied by the rate of 0.484 percent.

13 ~~((As used in this section,))~~ (2) The following definitions apply
14 throughout this section unless the context clearly requires otherwise.

15 (a) "Cold storage warehouse" means a storage warehouse used to
16 store fresh and/or frozen perishable fruits or vegetables, meat,
17 seafood, dairy products, or fowl, or any combination thereof, at a
18 desired temperature to maintain the quality of the product for orderly
19 marketing.

20 ~~((As used in this section,))~~ (b) "Storage warehouse" means a
21 building or structure, or any part thereof, in which goods, wares, or
22 merchandise are received for storage for compensation, except field
23 warehouses, fruit warehouses, fruit packing plants, warehouses licensed
24 under chapter 22.09 RCW, public garages storing automobiles, railroad
25 freight sheds, docks and wharves, and "self-storage" or "mini storage"
26 facilities whereby customers have direct access to individual storage
27 areas by separate entrance. "Storage warehouse" does not include a
28 building or structure, or that part of such building or structure, in
29 which an activity taxable under RCW 82.04.272 is conducted.

30 ~~((As used in this section,))~~ (c) "Periodical or magazine" means a
31 printed publication, other than a newspaper, issued regularly at stated
32 intervals at least once every three months, including any supplement or
33 special edition of the publication.

34 **Sec. 34.** RCW 82.04.280 and 2009 c 461 s 3 are each amended to read
35 as follows:

36 (1) Upon every person engaging within this state in the business
37 of: ~~((+1+))~~ (a) Printing materials other than newspapers, and of

1 publishing periodicals or magazines; ~~((+2))~~ (b) building, repairing or
2 improving any street, place, road, highway, easement, right-of-way,
3 mass public transportation terminal or parking facility, bridge,
4 tunnel, or trestle which is owned by a municipal corporation or
5 political subdivision of the state or by the United States and which is
6 used or to be used, primarily for foot or vehicular traffic including
7 mass transportation vehicles of any kind and including any
8 readjustment, reconstruction or relocation of the facilities of any
9 public, private or cooperatively owned utility or railroad in the
10 course of such building, repairing or improving, the cost of which
11 readjustment, reconstruction, or relocation, is the responsibility of
12 the public authority whose street, place, road, highway, easement,
13 right-of-way, mass public transportation terminal or parking facility,
14 bridge, tunnel, or trestle is being built, repaired or improved; ~~((+3)
15 extracting for hire or processing for hire, except persons taxable as
16 extractors for hire or processors for hire under another section of
17 this chapter; (4))~~ (c) operating a cold storage warehouse or storage
18 warehouse, but not including the rental of cold storage lockers;
19 ~~((+5))~~ (d) representing and performing services for fire or casualty
20 insurance companies as an independent resident managing general agent
21 ~~((licensed under the provisions of RCW 48.05.310))~~; ~~((+6))~~ (e) radio
22 and television broadcasting, excluding network, national and regional
23 advertising computed as a standard deduction based on the national
24 average thereof as annually reported by the Federal Communications
25 Commission, or in lieu thereof by itemization by the individual
26 broadcasting station, and excluding that portion of revenue represented
27 by the out-of-state audience computed as a ratio to the station's total
28 audience as measured by the 100 micro-volt signal strength and delivery
29 by wire, if any; ~~((+7))~~ (f) engaging in activities which bring a
30 person within the definition of consumer contained in RCW 82.04.190(6);
31 as to such persons, the amount of tax on such business is equal to the
32 gross income of the business multiplied by the rate of 0.484 percent.

33 ~~((As used in this section,))~~ (2) The following definitions apply
34 throughout this section unless the context clearly requires otherwise.

35 (a) "Cold storage warehouse" means a storage warehouse used to
36 store fresh and/or frozen perishable fruits or vegetables, meat,
37 seafood, dairy products, or fowl, or any combination thereof, at a

1 desired temperature to maintain the quality of the product for orderly
2 marketing.

3 ((~~As used in this section,~~)) (b) "Storage warehouse" means a
4 building or structure, or any part thereof, in which goods, wares, or
5 merchandise are received for storage for compensation, except field
6 warehouses, fruit warehouses, fruit packing plants, warehouses licensed
7 under chapter 22.09 RCW, public garages storing automobiles, railroad
8 freight sheds, docks and wharves, and "self-storage" or "mini storage"
9 facilities whereby customers have direct access to individual storage
10 areas by separate entrance. "Storage warehouse" does not include a
11 building or structure, or that part of such building or structure, in
12 which an activity taxable under RCW 82.04.272 is conducted.

13 ((~~As used in this section,~~)) (c) "Periodical or magazine" means a
14 printed publication, other than a newspaper, issued regularly at stated
15 intervals at least once every three months, including any supplement or
16 special edition of the publication.

17 **Sec. 35.** RCW 82.04.290 and 2008 c 81 s 6 are each amended to read
18 as follows:

19 (1) Upon every person engaging within this state in the business of
20 providing international investment management services, as to such
21 persons, the amount of tax with respect to such business ((~~shall be~~))
22 is equal to the gross income or gross proceeds of sales of the business
23 multiplied by a rate of 0.275 percent.

24 (2)(a) Upon every person engaging within this state in any business
25 activity other than or in addition to an activity taxed explicitly
26 under another section in this chapter or subsection (3) of this
27 section; as to such persons the amount of tax on account of such
28 activities ((~~shall be~~)) is equal to the gross income of the business
29 multiplied by the rate of ((~~1.5~~)) 1.4625 percent.

30 (b) This subsection (2) includes, among others, and without
31 limiting the scope hereof (whether or not title to materials used in
32 the performance of such business passes to another by accession,
33 confusion or other than by outright sale), persons engaged in the
34 business of rendering any type of service which does not constitute a
35 "sale at retail" or a "sale at wholesale." The value of advertising,
36 demonstration, and promotional supplies and materials furnished to an
37 agent by his principal or supplier to be used for informational,

1 educational and promotional purposes (~~shall~~) may not be considered a
2 part of the agent's remuneration or commission and (~~shall~~) is not
3 (~~be~~) subject to taxation under this section.

4 (3)(a) Until July 1, 2024, upon every person engaging within this
5 state in the business of performing aerospace product development for
6 others, as to such persons, the amount of tax with respect to such
7 business (~~shall-be~~) is equal to the gross income of the business
8 multiplied by a rate of 0.9 percent.

9 (b) "Aerospace product development" has the meaning as provided in
10 RCW 82.04.4461.

11 NEW SECTION. **Sec. 36.** A new section is added to chapter 82.04 RCW
12 to read as follows:

13 Upon every person engaging within this state in the business of
14 extracting for hire or processing for hire, except persons taxable as
15 extractors for hire or processors for hire under another section of
16 this chapter; as to such persons, the amount of tax on such business is
17 equal to the gross income of the business multiplied by the rate of
18 0.4719 percent.

19 **DISTRIBUTION: ENERGY EFFICIENCY FOR GOVERNMENT**

20 **Sec. 37.** RCW 39.35C.020 and 2001 c 214 s 21 are each amended to
21 read as follows:

22 (1) Each state agency and school district (~~shall~~) must implement
23 cost-effective conservation improvements and maintain efficient
24 operation of its facilities in order to minimize energy consumption and
25 related environmental impacts and reduce operating costs. Each state
26 agency (~~shall~~) must undertake an energy audit and implement cost-
27 effective conservation measures pursuant to the time schedules and
28 requirements set forth in chapter 43.19 RCW, except that any state
29 agency that, after December 31, 1997, has completed energy audits and
30 implemented cost-effective conservation measures, or has contracted
31 with an energy service company for energy audits and conservation
32 measures, is deemed to have met the requirements of this subsection for
33 those facilities included in the audits and conservation measures.
34 Each school district (~~shall~~) must undertake an energy audit and
35 implement cost-effective conservation measures pursuant to the time

1 schedules and requirements set forth in RCW 39.35C.025. Performance-
2 based contracting (~~shall be~~) is the preferred method for completing
3 energy audits and implementing cost-effective conservation measures.

4 (2) The department shall assist state agencies and school districts
5 in identifying, evaluating, financing, and implementing cost-effective
6 conservation projects at their facilities. The assistance (~~shall~~)
7 must include the following:

8 (a) Notifying state agencies and school districts of their
9 responsibilities under this chapter;

10 (b) Apprising state agencies and school districts of opportunities
11 to develop and finance such projects;

12 (c) Providing technical and analytical support, including
13 procurement of performance-based contracting services;

14 (d) Reviewing verification procedures for energy savings; and

15 (e) Assisting in the structuring and arranging of financing for
16 cost-effective conservation projects.

17 (3) Conservation projects implemented under this chapter shall have
18 appropriate levels of monitoring to verify the performance and measure
19 the energy savings over the life of the project. The department
20 (~~shall~~) must solicit involvement in program planning and
21 implementation from utilities and other energy conservation suppliers,
22 especially those that have demonstrated experience in performance-based
23 energy programs.

24 (4) The department shall comply with the requirements of chapter
25 39.80 RCW when contracting for architectural or engineering services.

26 (5) The department (~~shall~~) must recover any costs and expenses it
27 incurs in providing assistance pursuant to this section, including
28 reimbursement from third parties participating in conservation
29 projects. The department (~~shall~~) must enter into a written agreement
30 with the public agency for the recovery of costs.

31 NEW SECTION. Sec. 38. A new section is added to chapter 39.35C
32 RCW to read as follows:

33 (1) Subject to available funding, the department must administer a
34 grant program for state agencies and school districts. The purpose of
35 this grant program is to provide funds to state agencies and schools
36 for the construction of energy conservation projects. A state agency
37 or school district must file an application with the department. The

1 department must rule on the application within sixty days. The
2 application must be in a form and manner prescribed by the department,
3 but must contain the following:

- 4 (a) A general description of the energy conservation project;
- 5 (b) The expected cost of the energy conservation project;
- 6 (c) The expected savings from the energy conservation project; and
- 7 (d) Documentation verifying the estimates in (b) and (c) of this
8 subsection.

9 (2) A state agency or school district may not receive more than
10 five percent of the money distributed on an annual basis to the energy
11 efficiency construction account created in RCW 39.35C.100 for an energy
12 conservation project.

13 **Sec. 39.** RCW 39.35C.100 and 1996 c 186 s 414 are each amended to
14 read as follows:

15 (1) The energy efficiency construction account is hereby created in
16 the state treasury. Moneys in the account may be spent only after
17 appropriation and only for the following purposes:

18 (a) Construction of energy efficiency projects, including project
19 evaluation and verification of benefits, project design, project
20 development, project construction, and project administration. Moneys
21 from distributions under section 22 of this act must be used only for
22 energy efficiency projects that constitute energy conservation
23 projects.

24 (b) Payment of principal and interest and other costs required
25 under bond covenant on bonds issued for the purpose of (a) of this
26 subsection.

27 (2) Sources for this account may include:

- 28 (a) Distributions under section 22 of this act;
- 29 (b) General obligation and revenue bond proceeds appropriated by
30 the legislature;
- 31 ~~((b))~~ (c) Loan repayments under RCW 39.35C.060 sufficient to pay
32 principal and interest obligations; and
- 33 ~~((e))~~ (d) Funding from federal, state, and local agencies.

34 **DISTRIBUTION: ENERGY SELF SUFFICIENCY FOR BUSINESS**

1 NEW SECTION. **Sec. 40.** A new section is added to chapter 43.21F

2 RCW to read as follows:

3 (1) The department, in consultation with the joint committee on
4 energy supply and energy conservation, must administer a business
5 renewable energy grant program. The purpose of this grant program is
6 to allocate funds to Washington businesses that invest in renewable
7 energy sources.

8 (2) To receive a grant under this section, a person must submit an
9 application to the department for approval of the facility, system, or
10 vehicle that uses, or will use, a renewable energy source. The
11 application must include:

12 (a) The name and address of the applicant and location of the
13 proposed renewable energy system;

14 (b) The applicant's tax registration number;

15 (c) A description of the proposed facility or system that will use
16 a renewable energy source or, in the case of a vehicle that uses
17 biofuel, a description of the vehicle;

18 (d) A copy of the electrical permit from the applicable local
19 jurisdiction, if the renewable energy source will be used within a
20 facility or system; and

21 (e) Any other information the department requires.

22 (3) Within sixty days of receiving an application for a renewable
23 energy source grant, the department shall notify the applicant as to
24 whether the department has approved the application.

25 (4) Upon approval by the department and subject to available
26 funding, the department shall distribute to the qualifying applicant an
27 amount not to exceed five percent of the qualifying applicant's taxes
28 due and payable for the prior calendar year under chapter 82.04 RCW.

29 (5) For the purposes of this section, "renewable energy source"
30 means biofuel, a wind generator, or any device or combination of
31 devices or elements that rely upon direct sunlight as an energy source
32 for use in the generation of electricity.

33 **MISCELLANEOUS**

34 **Sec. 41.** RCW 82.03.130 and 2005 c 253 s 7 are each amended to read
35 as follows:

1 (1) The board shall have jurisdiction to decide the following types
2 of appeals:

3 (a) Appeals taken pursuant to RCW 82.03.190.

4 (b) Appeals from a county board of equalization pursuant to RCW
5 84.08.130.

6 (c) Appeals by an assessor or landowner from an order of the
7 director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if
8 filed with the board of tax appeals within thirty days after the
9 mailing of the order, the right to such an appeal being hereby
10 established.

11 (d) Appeals by an assessor or owner of an intercounty public
12 utility or private car company from determinations by the director of
13 revenue of equalized assessed valuation of property and the
14 apportionment thereof to a county made pursuant to chapter 84.12 and
15 84.16 RCW, if filed with the board of tax appeals within thirty days
16 after mailing of the determination, the right to such appeal being
17 hereby established.

18 (e) Appeals by an assessor, landowner, or owner of an intercounty
19 public utility or private car company from a determination of any
20 county indicated ratio for such county compiled by the department of
21 revenue pursuant to RCW 84.48.075(~~(:—PROVIDED, That)~~).

22 (i) (~~Said~~) The appeal must be filed after review of the ratio
23 under RCW 84.48.075(3) and not later than fifteen days after the
24 mailing of the certification; and

25 (ii) The hearing before the board (~~shall~~) must be expeditiously
26 held in accordance with rules prescribed by the board and (~~shall~~)
27 takes precedence over all matters of the same character.

28 (f) Appeals from the decisions of sale price of second-class
29 shorelands on navigable lakes by the department of natural resources
30 pursuant to RCW (~~(79.94.210)~~) 79.125.450.

31 (g) Appeals from urban redevelopment property tax apportionment
32 district proposals established by governmental ordinances pursuant to
33 RCW 39.88.060.

34 (h) Appeals from interest rates as determined by the department
35 (~~of revenue~~) for use in valuing farmland under current use assessment
36 pursuant to RCW 84.34.065.

37 (i) Appeals from revisions to stumpage value tables used to

1 determine value by the department (~~of revenue~~) pursuant to RCW
2 84.33.091.

3 (j) Appeals from denial of tax exemption application by the
4 department of revenue pursuant to RCW 84.36.850.

5 (k) Appeals pursuant to RCW 84.40.038(3).

6 (l) Appeals pursuant to RCW 84.39.020.

7 (m) Appeals relating to tax deficiencies and refunds, including
8 penalties and interest under Title 82A RCW.

9 (2) Except as otherwise specifically provided by law hereafter, the
10 provisions of RCW 1.12.070 (~~shall~~) apply to all notices of appeal
11 filed with the board of tax appeals.

12 **Sec. 42.** RCW 82.03.140 and 2000 c 103 s 1 are each amended to read
13 as follows:

14 (1) In all appeals over which the board has jurisdiction under RCW
15 82.03.130, a party taking an appeal may elect either a formal or an
16 informal hearing, such election to be made according to rules of
17 practice and procedure to be promulgated by the board(~~(+ PROVIDED,~~
18 ~~That))~~).

19 (2) Nothing (~~shall~~) prevents the assessor or taxpayer, as a party
20 to an appeal pursuant to RCW 84.08.130, within twenty days from the
21 date of the receipt of the notice of appeal, from filing with the clerk
22 of the board notice of intention that the hearing be a formal one(~~(+~~
23 ~~PROVIDED, HOWEVER, That))~~).

24 (3) Nothing (~~herein shall~~) in this section may be construed to
25 modify the provisions of RCW 82.03.190(~~(+ AND PROVIDED FURTHER,~~
26 ~~That))~~).

27 (4) Upon an appeal under RCW 82.03.130(1) (e) or (l), the director
28 (~~of revenue~~) may, within ten days from the date of its receipt of the
29 notice of appeal, file with the clerk of the board notice of its
30 (~~intention that the hearing be held pursuant to chapter 34.05 RCW~~)
31 election of a formal hearing.

32 (5) In the event that appeals are taken from the same decision,
33 order, or determination, as the case may be, by different parties and
34 only one of such parties elects a formal hearing, a formal hearing
35 (~~shall~~) must be granted.

1 **Sec. 43.** 2009 c 461 s 9 (uncodified) is amended to read as
2 follows:

3 (1)(a) Section 28, chapter . . . , Laws of 2010 (section 28 of this
4 act), section 34, chapter . . . , Laws of 2010 (section 34 of this act),
5 section 3, chapter 461, Laws of 2009, section 7, chapter 300, Laws of
6 2006, and section 4, chapter 149, Laws of 2003 are contingent upon the
7 siting and commercial operation of a significant semiconductor
8 microchip fabrication facility in the state of Washington.

9 (b) For the purposes of this section:

10 (i) "Commercial operation" means the same as "commencement of
11 commercial production" as used in RCW 82.08.965.

12 (ii) "Semiconductor microchip fabrication" means "manufacturing
13 semiconductor microchips" as defined in RCW 82.04.426.

14 (iii) "Significant" means the combined investment of new buildings
15 and new machinery and equipment in the buildings, at the commencement
16 of commercial production, will be at least one billion dollars.

17 (2) Chapter 149, Laws of 2003 takes effect the first day of the
18 month in which a contract for the construction of a significant
19 semiconductor fabrication facility is signed, as determined by the
20 director of the department of revenue.

21 (3)(a) The department of revenue must provide notice of the
22 effective date of this act to affected taxpayers, the legislature, and
23 others as deemed appropriate by the department.

24 (b) If, after making a determination that a contract has been
25 signed and chapter 149, Laws of 2003 is effective, the department
26 discovers that commencement of commercial production did not take place
27 within three years of the date the contract was signed, the department
28 must make a determination that chapter 149, Laws of 2003 is no longer
29 effective, and all taxes that would have been otherwise due are deemed
30 deferred taxes and are immediately assessed and payable from any person
31 reporting tax under RCW 82.04.240(2) or claiming an exemption or credit
32 under section 2 or 5 through 10 , chapter 149, Laws of 2003. The
33 department is not authorized to make a second determination regarding
34 the effective date of chapter 149, Laws of 2003.

35 NEW SECTION. **Sec. 44.** CODIFICATION. Sections 1 through 22 of
36 this act constitute a new title, to be codified as Title 82A RCW.

1 NEW SECTION. **Sec. 45.** SEVERABILITY CLAUSE. If any provision of
2 this act or its application to any person or circumstance is held
3 invalid, the remainder of the act or the application of the provision
4 to other persons or circumstances is not affected.

5 NEW SECTION. **Sec. 46.** EFFECTIVE DATE. Unless expressly provided
6 otherwise, this act takes effect January 1, 2010.

7 NEW SECTION. **Sec. 47.** Sections 23 and 24 of this act expire June
8 30, 2016.

9 NEW SECTION. **Sec. 48.** Sections 26, 27, 29, 31 through 33, 35, and
10 36 of this act take effect January 1, 2011.

11 NEW SECTION. **Sec. 49.** Section 27 of this act expires on the date
12 that section 28 of this act takes effect.

13 NEW SECTION. **Sec. 50.** Sections 28 and 34 of this act take effect
14 on the later of: January 1, 2011, or the date the contingency in
15 section 43 of this act occurs.

16 NEW SECTION. **Sec. 51.** Section 29 of this act expires July 1,
17 2011.

18 NEW SECTION. **Sec. 52.** Section 30 of this act takes effect July 1,
19 2011.

20 NEW SECTION. **Sec. 53.** Section 33 of this act expires on the date
21 that section 34 of this act takes effect.

--- END ---