

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SUBSTITUTE SENATE BILL 6143

61st Legislature
2010 1st Special Session

Passed by the Senate April 12, 2010
YEAS 25 NAYS 21

President of the Senate

Passed by the House April 10, 2010
YEAS 52 NAYS 44

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SECOND ENGROSSED SUBSTITUTE SENATE BILL 6143** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 6143

AS RECOMMENDED BY THE CONFERENCE COMMITTEE

Passed Legislature - 2010 1st Special Session

State of Washington 61st Legislature 2010 Regular Session

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

READ FIRST TIME 03/06/10.

1 AN ACT Relating to modifying excise tax laws to preserve funding
2 for public schools, colleges, and universities, as well as other public
3 systems essential for the safety, health, and security of all
4 Washingtonians; amending RCW 82.04.220, 82.04.2907, 82.04.2907,
5 82.04.460, 82.04.080, 82.32.090, 82.12.020, 82.45.033, 82.45.070,
6 82.45.080, 82.45.100, 82.45.220, 43.07.390, 82.04.4292, 82.04.423,
7 82.04.4266, 82.04.4266, 82.04.260, 82.04.250, 82.04.250, 82.04.250,
8 82.04.298, 82.04.334, 82.04.4463, 82.04.4463, 82.08.806, 82.32.550,
9 82.45.195, 35.102.150, 48.14.080, 82.08.890, 82.12.890, 82.04.360,
10 82.32.145, 82.08.0293, 82.08.0293, 82.12.0293, 54.28.011, 82.04.4451,
11 82.32.045, 82.04.394, 82.04.394, 66.24.290, 82.08.037, 82.12.037,
12 82.08.---, and 82.12.---; reenacting and amending RCW 82.45.010,
13 82.04.260, 82.04.261, and 82.04.440; adding new sections to chapter
14 82.04 RCW; adding new sections to chapter 82.32 RCW; adding new
15 sections to chapter 82.08 RCW; adding new sections to chapter 82.12
16 RCW; creating new sections; providing effective dates; providing
17 expiration dates; and declaring an emergency.

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

1 single factor sales apportionment for purposes of apportioning royalty
2 income and certain service income for state business and occupation tax
3 purposes.

4 (c) Nothing in this act may be construed, however, to authorize
5 apportionment of the gross income or value of products taxable under
6 the following business and occupation tax classifications: Retailing,
7 wholesaling, manufacturing, processing for hire, extracting, extracting
8 for hire, printing, government contracting, public road construction,
9 the classifications in RCW 82.04.280 (2), (4), (6), and (7), and any
10 other activity not specifically included in the definition of
11 apportionable activities in RCW 82.04.460.

12 (d) Nothing in this part is intended to modify the nexus and
13 apportionment requirements for local gross receipts business and
14 occupation taxes.

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

17 (1) There is levied and ((shall be)) collected from every person
18 that has a substantial nexus with this state a tax for the act or
19 privilege of engaging in business activities. ((Such)) The tax ((shall
20 be)) is measured by the application of rates against value of products,
21 gross proceeds of sales, or gross income of the business, as the case
22 may be.

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

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

28 "Engaging within this state" and "engaging within the state," when
29 used in connection with any apportionable activity as defined in RCW
30 82.04.460, means that a person generates gross income of the business
31 from sources within this state, such as customers or intangible
32 property located in this state, regardless of whether the person is
33 physically present in this state.

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

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

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

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

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

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

10 (ii) More than fifty thousand dollars of payroll in this state;

11 (iii) More than two hundred fifty thousand dollars of receipts from
12 this state; or

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

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

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

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

31 (c) The average value of property must be determined by averaging
32 the values at the beginning and ending of the tax year; but the
33 department may require the averaging of monthly values during the tax
34 year if reasonably required to properly reflect the average value of
35 the taxpayer's property.

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

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

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

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

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

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

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

35 (3)(a) Payroll counting toward the thresholds in subsection
36 (1)(c)(ii) and (iv) of this section is the total amount paid by the
37 taxpayer for compensation in this state during the tax year plus
38 nonemployee compensation paid to representative third parties in this

1 state. Nonemployee compensation paid to representative third parties
2 includes the gross amount paid to nonemployees who represent the
3 taxpayer in interactions with the taxpayer's clients and includes sales
4 commissions.

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

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

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

17 (4) Receipts counting toward the thresholds in subsection
18 (1)(c)(iii) and (iv) of this section are those amounts included in the
19 numerator of the receipts factor under section 105 of this act and, for
20 financial institutions, those amounts included in the numerator of the
21 receipts factor under the rule adopted by the department as authorized
22 in RCW 82.04.460(2).

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

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

4 (6) Subsections (1) through (5) of this section only apply with
5 respect to the taxes imposed under this chapter on apportionable
6 activities as defined in RCW 82.04.460. For purposes of the taxes
7 imposed under this chapter on any activity not included in the
8 definition of apportionable activities in RCW 82.04.460, a person is
9 deemed to have a substantial nexus with this state if the person has a
10 physical presence in this state, which need only be demonstrably more
11 than a slightest presence. For purposes of this subsection, a person
12 is physically present in this state if the person has property or
13 employees in this state. A person is also physically present in this
14 state if the person, either directly or through an agent or other
15 representative, engages in activities in this state that are
16 significantly associated with the person's ability to establish or
17 maintain a market for its products in this state.

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

20 (1) The apportionable income of a person within the scope of RCW
21 82.04.460(1) is apportioned to Washington by multiplying its
22 apportionable income by the receipts factor. Persons who are subject
23 to tax under more than one of the tax classifications enumerated in RCW
24 82.04.460(4)(a) (i) through (x) must calculate a separate receipts
25 factor for each tax classification that the person is taxable under.

26 (2) For purposes of subsection (1) of this section, the receipts
27 factor is a fraction and is calculated as provided in subsections (3)
28 and (4) of this section and, for financial institutions, as provided in
29 the rule adopted by the department under the authority of RCW
30 82.04.460(2).

31 (3)(a) The numerator of the receipts factor is the total gross
32 income of the business of the taxpayer attributable to this state
33 during the tax year from engaging in an apportionable activity. The
34 denominator of the receipts factor is the total gross income of the
35 business of the taxpayer from engaging in an apportionable activity
36 everywhere in the world during the tax year.

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

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

7 (ii) If the customer received the benefit of the service or used
8 the intangible property in more than one state, gross income of the
9 business must be attributed to the state in which the benefit of the
10 service was primarily received or in which the intangible property was
11 primarily used.

12 (iii) If the taxpayer is unable to attribute gross income of the
13 business under the provisions of (b)(i) or (ii) of this subsection (3),
14 gross income of the business must be attributed to the state from which
15 the customer ordered the service or, in the case of royalties, the
16 office of the customer from which the royalty agreement with the
17 taxpayer was negotiated.

18 (iv) If the taxpayer is unable to attribute gross income of the
19 business under the provisions of (b)(i), (ii), or (iii) of this
20 subsection (3), gross income of the business must be attributed to the
21 state to which the billing statements or invoices are sent to the
22 customer by the taxpayer.

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

27 (vi) If the taxpayer is unable to attribute gross income of the
28 business under the provisions of (b)(i), (ii), (iii), (iv), or (v) of
29 this subsection (3), gross income of the business must be attributed to
30 the state where the customer is located as indicated by the customer's
31 address: (A) Shown in the taxpayer's business records maintained in
32 the regular course of business; or (B) obtained during consummation of
33 the sale or the negotiation of the contract for services or for the use
34 of the taxpayer's intangible property, including any address of a
35 customer's payment instrument when readily available to the taxpayer
36 and no other address is available.

37 (vii) If the taxpayer is unable to attribute gross income of the

1 business under the provisions of (b)(i), (ii), (iii), (iv), (v), or
2 (vi) of this subsection (3), gross income of the business must be
3 attributed to the commercial domicile of the taxpayer.

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

10 (c) Gross income of the business from engaging in an apportionable
11 activity must be excluded from the denominator of the receipts factor
12 if, in respect to such activity, at least some of the activity is
13 performed in this state, and the gross income is attributable under (b)
14 of this subsection (3) to a state in which the taxpayer is not taxable.
15 For purposes of this subsection (3)(c), "not taxable" means that the
16 taxpayer is not subject to a business activities tax by that state,
17 except that a taxpayer is taxable in a state in which it would be
18 deemed to have a substantial nexus with that state under the standards
19 in section 104(1) of this act regardless of whether that state imposes
20 such a tax. "Business activities tax" means a tax measured by the
21 amount of, or economic results of, business activity conducted in a
22 state. The term includes taxes measured in whole or in part on net
23 income or gross income or receipts. "Business activities tax" does not
24 include a sales tax, use tax, or a similar transaction tax, imposed on
25 the sale or acquisition of goods or services, whether or not
26 denominated a gross receipts tax or a tax imposed on the privilege of
27 doing business.

28 (d) This subsection (3) does not apply to financial institutions
29 with respect to apportionable income taxable under RCW 82.04.290.
30 Financial institutions must calculate the receipts factor as provided
31 in subsection (4) of this section and the rule adopted by the
32 department under the authority of RCW 82.04.460(2) with respect to
33 apportionable income taxable under RCW 82.04.290. Financial
34 institutions that are subject to tax under any other tax classification
35 enumerated in RCW 82.04.460(4)(a) (i) through (v) and (vii) through (x)
36 must calculate a separate receipts factor, as provided in this section,
37 for each of the other tax classifications that the financial
38 institution is taxable under.

1 (4) A taxpayer may calculate the receipts factor for the current
2 tax year based on the most recent calendar year for which information
3 is available for the full calendar year. If a taxpayer does not
4 calculate the receipts factor for the current tax year based on
5 previous calendar year information as authorized in this subsection,
6 the business must use current year information to calculate the
7 receipts factor for the current tax year. In either case, a taxpayer
8 must correct the reporting for the current tax year when complete
9 information is available to calculate the receipts factor for that
10 year, but not later than October 31st of the following tax year.
11 Interest will apply to any additional tax due on a corrected tax
12 return. Interest must be assessed at the rate provided for delinquent
13 excise taxes under chapter 82.32 RCW, retroactively to the date the
14 original return was due, and will accrue until the additional taxes are
15 paid. Penalties as provided in RCW 82.32.090 will apply to any such
16 additional tax due only if the current tax year reporting is not
17 corrected and the additional tax is not paid by October 31st of the
18 following tax year. Interest as provided in RCW 82.32.060 will apply
19 to any tax paid in excess of that properly due on a return as a result
20 of a taxpayer using previous calendar year data or incomplete current-
21 year data to calculate the receipts factor.

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

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

26 (b) "State" means a state of the United States, the District of
27 Columbia, the Commonwealth of Puerto Rico, any territory or possession
28 of the United States, or any foreign country or political subdivision
29 of a foreign country.

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

32 (1) Upon every person engaging within this state in the business of
33 receiving income from royalties (~~(or charges in the nature of royalties~~
34 ~~for the granting of intangible rights, such as copyrights, licenses,~~
35 ~~patents, or franchise fees)), the amount of tax with respect to~~
36 (~~such~~) the business (~~(shall be)~~) is equal to the gross income from

1 royalties (~~or charges in the nature of royalties from the business~~)
2 multiplied by the rate of 0.484 percent.

3 (2) For the purposes of this section, "gross income from royalties"
4 means compensation for the use of intangible property, (~~such as~~)
5 including charges in the nature of royalties, regardless of where the
6 intangible property will be used. For purposes of this subsection,
7 "intangible property" includes copyrights, patents, licenses,
8 franchises, trademarks, trade names, and similar items. (~~It~~) "Gross
9 income from royalties" does not include compensation for any natural
10 resource, the licensing of prewritten computer software to the end
11 user, or the licensing (~~or use~~) of digital goods, digital codes, or
12 digital automated services to the end user as defined in RCW
13 82.04.190(11).

14 **Sec. 107.** RCW 82.04.2907 and 2010 c 111 (SHB 2620) s 302 are each
15 amended to read as follows:

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

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

33 **Sec. 108.** RCW 82.04.460 and 2004 c 174 s 6 are each amended to
34 read as follows:

35 (1) Except as otherwise provided in this section, any person
36 (~~rendering services~~) earning apportionable income taxable under (~~RCW~~

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

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

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

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

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

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

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

22 (i) RCW 82.04.255;

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

24 (iii) RCW 82.04.280(5);

25 (iv) RCW 82.04.285;

26 (v) RCW 82.04.286;

27 (vi) RCW 82.04.290;

28 (vii) RCW 82.04.2907;

29 (viii) RCW 82.04.2908;

30 (ix) RCW 82.04.263, but only to the extent of any activity that
31 would be taxable under any of the provisions enumerated under (a)(i)
32 through (viii) of this subsection (4) if the tax classification in RCW
33 82.04.263 did not exist; and

34 (x) RCW 82.04.260(13) and 82.04.280(1), but only with respect to
35 advertising.

36 (b)(i) "Taxable in another state" means that the taxpayer is
37 subject to a business activities tax by another state on its income
38 received from engaging in apportionable activities; or the taxpayer is

1 not subject to a business activities tax by another state on its income
2 received from engaging in apportionable activities, but any other state
3 has jurisdiction to subject the taxpayer to a business activities tax
4 on such income under the substantial nexus standards in section 104(1)
5 of this act.

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

8 **Sec. 109.** RCW 82.04.080 and 1961 c 15 s 82.04.080 are each amended
9 to read as follows:

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

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

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

27 (1) This chapter does not apply to amounts received by a financial
28 institution from an affiliated person if the amounts are received from
29 transactions that are required to be at arm's length under sections 23A
30 or 23B of the federal reserve act as existing on the effective date of
31 this section or such subsequent date as may be provided by the
32 department by rule, consistent with the purposes of this section. For
33 purposes of this subsection, "financial institution" has the same
34 meaning as in RCW 82.04.080.

35 (2) As used in this section, "affiliated" means under common
36 control. "Common control" means the possession, directly or

1 indirectly, of more than fifty percent of the power to direct or cause
2 the direction of the management and policies of a person, whether
3 through the ownership of voting shares, by contract, or otherwise.

4 NEW SECTION. **Sec. 111.** A new section is added to chapter 82.04
5 RCW to read as follows:

6 (1) This chapter does not apply to amounts received by investment
7 conduits or securitization entities from cash and securities.

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

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

12 (i) Has no employees;

13 (ii) Has no direct profit-making motive;

14 (iii) Owns no tangible assets, other than cash or securities;

15 (iv) Holds or owns cash or securities solely as a conduit,
16 allocating its income to holders of its ownership interests; and

17 (v) Has, within twelve months of its organization or initial
18 capitalization date, issued ownership interests to other than
19 affiliated persons, equal to or greater than twenty-five percent of its
20 total issued ownership interests.

21 (b) "Securities" has the same meaning as in section 2 of the
22 securities act of 1933 and includes eligible assets as defined by Rule
23 3a-7 of the investment company act, as the law and rule exist on the
24 effective date of this section or such subsequent date as may be
25 provided by the department by rule, consistent with the purposes of
26 this section.

27 (c) "Securitization entity" means an entity created by a bank
28 holding company if the entity created:

29 (i) Has no employees;

30 (ii) Has no direct profit-making motive;

31 (iii) Owns no tangible assets, other than cash, fixed or revolving
32 discrete pools of credit or charge card receivables originated by a
33 financial institution, or securities;

34 (iv) Acts solely as a conduit, allocating its income to holders of
35 its ownership interests; and

36 (v) Has as its sole business activities the:

1 (A) Acquisition of such discrete pools of credit or charge card
2 receivables; and

3 (B) Issuance or causing the issuance of securities primarily to
4 persons not affiliated with the entity.

5 (d) "Bank holding company" has the same meaning as provided in the
6 bank holding company act of 1956, as existing on the effective date of
7 this section or such subsequent date as may be provided by the
8 department by rule, consistent with the purposes of this section.

9 (e) "No direct profit-making motive" means that all of an entity's
10 income, less a reasonable servicing fee, is paid to holders of its
11 ownership interests.

12 (f) "Ownership interest" means interests categorized as debt or
13 equity for purposes of federal tax or generally accepted accounting
14 principles.

15 (g) "Affiliated" has the same meaning as in section 110 of this
16 act.

17 NEW SECTION. **Sec. 112.** A new section is added to chapter 82.04
18 RCW to read as follows:

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

22 (a) An air carrier, as defined in RCW 82.42.030, which is primarily
23 engaged in the business of providing passenger air service;

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

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

26 (2) The deduction authorized under this section is not available to
27 any person who is physically present in this state as determined under
28 section 104(6) of this act.

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

30 (a) "Affiliate" means a person is "affiliated," as defined in
31 section 110 of this act, with another person; and

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

34 **PART II**

35 **Tax Avoidance Transactions**

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

3 (1) It is the legislature's intent to require all taxpayers to pay
4 their fair share of taxes. To accomplish this purpose, it is the
5 legislature's intent to stop transactions or arrangements that are
6 designed to unfairly avoid taxes.

7 (2) The department must disregard, for tax purposes, the tax
8 avoidance transactions or arrangements that are described in subsection
9 (3) of this section. The department must deny the tax benefit that
10 would otherwise result from the tax avoidance transaction or
11 arrangement. In determining whether the department must disregard a
12 transaction or arrangement described under subsection (3) of this
13 section, the department may consider:

14 (a) Whether an arrangement or transaction changes in a meaningful
15 way, apart from its tax effects, the economic positions of the
16 participants in the arrangement when considered as a whole;

17 (b) Whether substantial nontax reasons exist for entering into an
18 arrangement or transaction;

19 (c) Whether an arrangement or transaction is a reasonable means of
20 accomplishing a substantial nontax purpose;

21 (d) An entities' relative contributions to the work that generates
22 income;

23 (e) The location where work is performed; and

24 (f) Other relevant factors.

25 (3) This section applies only to the following transactions or
26 arrangements:

27 (a) Arrangements that are, in form, a joint venture or similar
28 arrangement between a construction contractor and the owner or
29 developer of a construction project but that are, in substance,
30 substantially guaranteed payments for the purchase of construction
31 services characterized by a failure of the parties' agreement to
32 provide for the contractor to share substantial profits and bear
33 significant risk of loss in the venture;

34 (b) Arrangements through which a taxpayer attempts to avoid tax
35 under chapter 82.04 RCW by disguising income received, or otherwise
36 avoiding tax on income, from a person that is not affiliated with the
37 taxpayer from business activities that would be taxable in Washington

1 by moving that income to another entity that would not be taxable in
2 Washington; and

3 (c) Arrangements through which a taxpayer attempts to avoid tax
4 under chapter 82.08 or 82.12 RCW by engaging in a transaction to
5 disguise its purchase or use of tangible personal property by vesting
6 legal title or other ownership interest in another entity over which
7 the taxpayer exercises control in such a manner as to effectively
8 retain control of the tangible personal property.

9 (4) In determining whether a transaction or arrangement comes
10 within the scope of subsection (3) of this section, the department is
11 not required to prove a taxpayer's subjective intent in engaging in the
12 transaction or arrangement.

13 (5) The department must adopt rules to assist in determining
14 whether a transaction or arrangement is within the scope of subsection
15 (3) of this section. The adoption of a rule as required under this
16 subsection is not a condition precedent for the department's exercise
17 of the authority provided in this section. Any rules adopted under
18 this section must include examples of transactions that the department
19 will disregard for tax purposes.

20 (6) This section does not affect the department's authority to
21 apply any other remedies available under statutory or common law.

22 (7) For purposes of this section, "affiliated" means under common
23 control. "Control" means the possession, directly or indirectly, of
24 more than fifty percent of the power to direct or cause the direction
25 of the management and policies of a person, whether through the
26 ownership of voting shares, by contract, or otherwise.

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

29 (1)(a) The department may not use section 201 of this act to
30 disregard any transaction or arrangement initiated before the effective
31 date of this section, if, in respect to such transaction or
32 arrangement, the taxpayer had reported its tax liability in conformance
33 with either specific written instructions provided by the department to
34 the taxpayer, a determination published under the authority of RCW
35 82.32.410, or other document made available by the department to the
36 general public.

1 (b) This section does not apply if the transaction or arrangement
2 engaged in by the taxpayer differs materially from the transaction or
3 arrangement that was addressed in the specific written instructions,
4 published determination, or other document made available by the
5 department to the general public.

6 (2) Section 201 of this act does not apply to any tax periods
7 ending before May 1, 2010, that were included in a completed field
8 audit conducted by the department.

9 (3) For purposes of this section, "specific written instructions"
10 means tax reporting instructions provided to a taxpayer and which
11 specifically identify the taxpayer to whom the instructions apply.
12 Specific written instructions may be provided as part of an audit, tax
13 assessment, determination, closing agreement, or in response to a
14 binding ruling request.

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

17 (1) If payment of any tax due on a return to be filed by a taxpayer
18 is not received by the department of revenue by the due date, there
19 (~~shall be~~) is assessed a penalty of five percent of the amount of the
20 tax; and if the tax is not received on or before the last day of the
21 month following the due date, there (~~shall be~~) is assessed a total
22 penalty of fifteen percent of the amount of the tax under this
23 subsection; and if the tax is not received on or before the last day of
24 the second month following the due date, there (~~shall be~~) is assessed
25 a total penalty of twenty-five percent of the amount of the tax under
26 this subsection. No penalty so added shall be less than five dollars.

27 (2) If the department of revenue determines that any tax has been
28 substantially underpaid, there (~~shall be~~) is assessed a penalty of
29 five percent of the amount of the tax determined by the department to
30 be due. If payment of any tax determined by the department to be due
31 is not received by the department by the due date specified in the
32 notice, or any extension thereof, there (~~shall be~~) is assessed a
33 total penalty of fifteen percent of the amount of the tax under this
34 subsection; and if payment of any tax determined by the department to
35 be due is not received on or before the thirtieth day following the due
36 date specified in the notice of tax due, or any extension thereof,
37 there (~~shall be~~) is assessed a total penalty of twenty-five percent

1 of the amount of the tax under this subsection. No penalty so added
2 (~~shall~~) may be less than five dollars. As used in this section,
3 "substantially underpaid" means that the taxpayer has paid less than
4 eighty percent of the amount of tax determined by the department to be
5 due for all of the types of taxes included in, and for the entire
6 period of time covered by, the department's examination, and the amount
7 of underpayment is at least one thousand dollars.

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

12 (4) If the department finds that a person has engaged in any
13 business or performed any act upon which a tax is imposed under this
14 title and that person has not obtained from the department a
15 registration certificate as required by RCW 82.32.030, the department
16 (~~shall~~) must impose a penalty of five percent of the amount of tax
17 due from that person for the period that the person was not registered
18 as required by RCW 82.32.030. The department (~~shall~~) may not impose
19 the penalty under this subsection (4) if a person who has engaged in
20 business taxable under this title without first having registered as
21 required by RCW 82.32.030, prior to any notification by the department
22 of the need to register, obtains a registration certificate from the
23 department.

24 (5) If the department finds that all or any part of a deficiency
25 resulted from the disregard of specific written instructions as to
26 reporting or tax liabilities, the department (~~shall~~) must add a
27 penalty of ten percent of the amount of the additional tax found due
28 because of the failure to follow the instructions. A taxpayer
29 disregards specific written instructions when the department (~~of~~
30 ~~revenue~~) has informed the taxpayer in writing of the taxpayer's tax
31 obligations and the taxpayer fails to act in accordance with those
32 instructions unless the department has not issued final instructions
33 because the matter is under appeal pursuant to this chapter or
34 departmental regulations. The department (~~shall~~) may not assess the
35 penalty under this section upon any taxpayer who has made a good faith
36 effort to comply with the specific written instructions provided by the
37 department to that taxpayer. Specific written instructions may be
38 given as a part of a tax assessment, audit, determination, or closing

1 agreement, provided that such specific written instructions (~~shall~~)
2 apply only to the taxpayer addressed or referenced on such documents.
3 Any specific written instructions by the department (~~of revenue~~
4 ~~shall~~) must be clearly identified as such and (~~shall~~) must inform
5 the taxpayer that failure to follow the instructions may subject the
6 taxpayer to the penalties imposed by this subsection.

7 (6) If the department finds that all or any part of a deficiency
8 resulted from engaging in a disregarded transaction, as described in
9 section 201(3) of this act, the department must assess a penalty of
10 thirty-five percent of the additional tax found to be due as a result
11 of engaging in a transaction disregarded by the department under
12 section 201(2) of this act. The penalty provided in this subsection
13 may be assessed together with any other applicable penalties provided
14 in this section on the same tax found to be due, except for the evasion
15 penalty provided in subsection (7) of this section. The department may
16 not assess the penalty under this subsection if, before the department
17 discovers the taxpayer's use of a transaction described under section
18 201(3) of this act, the taxpayer discloses its participation in the
19 transaction to the department.

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

24 ~~((+7))~~ (8) The penalties imposed under subsections (1) through (4)
25 of this section can each be imposed on the same tax found to be due.
26 This subsection does not prohibit or restrict the application of other
27 penalties authorized by law.

28 ~~((+8))~~ (9) The department (~~of revenue~~) may not impose (~~both~~)
29 the evasion penalty (~~and~~) in combination with the penalty for
30 disregarding specific written instructions or the penalty provided in
31 subsection (6) of this section on the same tax found to be due.

32 ~~((+9))~~ (10) For the purposes of this section, "return" means any
33 document a person is required by the state of Washington to file to
34 satisfy or establish a tax or fee obligation that is administered or
35 collected by the department (~~of revenue~~), and that has a statutorily
36 defined due date.

1 NEW SECTION. **Sec. 204.** A new section is added to chapter 82.32
2 RCW to read as follows:

3 There is hereby created a joint tax avoidance review committee
4 which is a bipartisan committee consisting of three members of the
5 senate, two from the majority caucus and one from the minority caucus,
6 and three members of the house of representatives, two from the
7 majority caucus and one from the minority caucus. The senate members
8 of the committee must be appointed by the majority leader of the
9 senate, and the house members of the committee must be appointed by the
10 speaker of the house. The appointing authorities must also appoint one
11 alternate member from each of the two largest caucuses of each
12 legislative chamber.

13 (1)(a) Members and alternates must be appointed as soon as possible
14 after the effective date of this section, and their terms continue
15 until such persons no longer wish to serve on the committee or no
16 longer serve in the legislature, whichever occurs first.

17 (b) A vacancy must be filled by the appointment of a legislator
18 from the same legislative chamber and caucus as the original
19 appointment. The appropriate appointing authority must make the
20 appointment within thirty days of the vacancy occurring. Former
21 committee members and alternates may be reappointed to the committee.

22 (2) The committee must choose its chair and vice-chair from among
23 its membership. The committee meets at the call of the chair. The
24 chair of the committee must cause all meeting notices and committee
25 documents to be sent to the committee members and alternates.

26 (3) Staff support for the committee must be provided by the senate
27 committee services and the house of representatives office of program
28 research.

29 (4) The committee must:

30 (a) Generally monitor the department's implementation of Part II of
31 this act, providing timely advice to the department in any rule making
32 undertaken pursuant to the authority granted under section 201 of this
33 act;

34 (b) Seek input from stakeholders and other legislators as the
35 committee may determine is desirable and useful in the furtherance of
36 its mission herein described;

37 (c) Review other cases, identified by the department, of tax

1 avoidance transactions not described in section 201 of this act that
2 may represent examples of arrangements that circumvent the policies of
3 this state and thus unfairly avoid taxes;

4 (d) Consider the need for an explicit statutory construction
5 standard to provide direction to the courts on the interpretation of
6 Part II of this act; and

7 (e) Provide a report to the fiscal committees of the house of
8 representatives and senate by December 31, 2010, which must include:

9 (i) Recommended legislation on any matters that the committee deems
10 advisable, including amendments to sections 201, 202, and 203 of this
11 act; and

12 (ii) Recommendations for future legislative oversight of the
13 department's implementation of sections 201, 202, and 203 of this act.

14 (5) For the purposes of this section, the disclosure of otherwise
15 confidential tax information to the members of the committee is deemed
16 to fall within the exception provided by RCW 82.32.330(3)(d).

17 (6) This section expires July 1, 2011.

18 NEW SECTION. **Sec. 205.** (1) The legislature finds that this
19 state's tax policy with respect to the taxation of transactions between
20 affiliated entities and the income derived from such transactions
21 (intercompany transactions) has motivated some taxpayers to engage in
22 transactions designed solely or primarily to minimize the tax effects
23 of intercompany transactions. The legislature further finds that some
24 intercompany transactions result from taxpayers that are required to
25 establish affiliated entities to comply with regulatory mandates and
26 that transactions between such affiliates effectively increases the tax
27 burden in this state on the affiliated group of entities.

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

34 (3) In conducting the review, the department must examine how this
35 state's tax policy compares to the tax policy of other states with
36 respect to the taxation of intercompany transactions. The department's

1 review must include an analysis of potential alternatives to the
2 current policy of taxing intercompany transactions, including their
3 estimated revenue impacts if practicable.

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

6 (5) The department must report its findings to the fiscal
7 committees of the house of representatives and senate by December 1,
8 2010. However, if the department has not completed its review by
9 December 1, 2010, the department must provide the fiscal committees of
10 the legislature with a brief status report by December 1, 2010, and the
11 final report by December 1, 2011.

12 **Sec. 206.** RCW 82.12.020 and 2009 c 535 s 305 are each amended to
13 read as follows:

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

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

27 (b) Prewritten computer software, regardless of the method of
28 delivery, but excluding prewritten computer software that is either
29 provided free of charge or is provided for temporary use in viewing
30 information, or both;

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

34 (d) Extended warranty; or

35 (e)(i) Digital good, digital code, or digital automated service,
36 including the use of any services provided by a seller exclusively in

1 connection with digital goods, digital codes, or digital automated
2 services, whether or not a separate charge is made for such services.

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

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

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

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

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

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

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

27 (3)(a) Except as provided in this section, payment of the tax
28 imposed by this chapter or chapter 82.08 RCW by one purchaser or user
29 of tangible personal property, extended warranty, digital good, digital
30 code, digital automated service, or other service does not have the
31 effect of exempting any other purchaser or user of the same property,
32 extended warranty, digital good, digital code, digital automated
33 service, or other service from the taxes imposed by such chapters.

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

35 (i) If the sale to, or the use by, the present user or his or her
36 bailor or donor has already been subjected to the tax under chapter
37 82.08 RCW or this chapter and the tax has been paid by the present user
38 or by his or her bailor or donor;

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

6 (iii) In respect to the use of any article of tangible personal
7 property acquired by bailment, if the property was acquired by a
8 previous bailee from the same bailor for use in the same general
9 activity and the original bailment was prior to June 9, 1961; or

10 (iv) To the use of digital goods or digital automated services,
11 which were obtained through the use of a digital code, if the sale of
12 the digital code to, or the use of the digital code by, the present
13 user or the present user's bailor or donor has already been subjected
14 to the tax under chapter 82.08 RCW or this chapter and the tax has been
15 paid by the present user or by the present user's bailor or donor.

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

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

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

29 **Sec. 207.** RCW 82.45.010 and 2008 c 116 s 3 and 2008 c 6 s 701 are
30 each reenacted and amended to read as follows:

31 (1) As used in this chapter, the term "sale" (~~((shall have))~~) has its
32 ordinary meaning and (~~((shall))~~) includes any conveyance, grant,
33 assignment, quitclaim, or transfer of the ownership of or title to real
34 property, including standing timber, or any estate or interest therein
35 for a valuable consideration, and any contract for such conveyance,
36 grant, assignment, quitclaim, or transfer, and any lease with an option
37 to purchase real property, including standing timber, or any estate or

1 interest therein or other contract under which possession of the
2 property is given to the purchaser, or any other person at the
3 purchaser's direction, and title to the property is retained by the
4 vendor as security for the payment of the purchase price. The term
5 also includes the grant, assignment, quitclaim, sale, or transfer of
6 improvements constructed upon leased land.

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

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

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

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

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

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

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

- 1 (b) A transfer of any leasehold interest other than of the type
2 mentioned above.
- 3 (c) A cancellation or forfeiture of a vendee's interest in a
4 contract for the sale of real property, whether or not such contract
5 contains a forfeiture clause, or deed in lieu of foreclosure of a
6 mortgage.
- 7 (d) The partition of property by tenants in common by agreement or
8 as the result of a court decree.
- 9 (e) The assignment of property or interest in property from one
10 spouse or one domestic partner to the other spouse or other domestic
11 partner in accordance with the terms of a decree of dissolution of
12 marriage or state registered domestic partnership or in fulfillment of
13 a property settlement agreement.
- 14 (f) The assignment or other transfer of a vendor's interest in a
15 contract for the sale of real property, even though accompanied by a
16 conveyance of the vendor's interest in the real property involved.
- 17 (g) Transfers by appropriation or decree in condemnation
18 proceedings brought by the United States, the state or any political
19 subdivision thereof, or a municipal corporation.
- 20 (h) A mortgage or other transfer of an interest in real property
21 merely to secure a debt, or the assignment thereof.
- 22 (i) Any transfer or conveyance made pursuant to a deed of trust or
23 an order of sale by the court in any mortgage, deed of trust, or lien
24 foreclosure proceeding or upon execution of a judgment, or deed in lieu
25 of foreclosure to satisfy a mortgage or deed of trust.
- 26 (j) A conveyance to the federal housing administration or veterans
27 administration by an authorized mortgagee made pursuant to a contract
28 of insurance or guaranty with the federal housing administration or
29 veterans administration.
- 30 (k) A transfer in compliance with the terms of any lease or
31 contract upon which the tax as imposed by this chapter has been paid or
32 where the lease or contract was entered into prior to the date this tax
33 was first imposed.
- 34 (l) The sale of any grave or lot in an established cemetery.
- 35 (m) A sale by the United States, this state or any political
36 subdivision thereof, or a municipal corporation of this state.
- 37 (n) A sale to a regional transit authority or public corporation

1 under RCW 81.112.320 under a sale/leaseback agreement under RCW
2 81.112.300.

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

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

34 (ii) However, the transfer described in (p)(i) of this subsection
35 cannot be preceded or followed within a twelve-month period by another
36 transfer or series of transfers, that, when combined with the otherwise
37 exempt transfer or transfers described in (p)(i) of this subsection,
38 results in the transfer of a controlling interest in the entity for

1 valuable consideration, and in which one or more persons previously
2 holding a controlling interest in the entity receive cash or property
3 in exchange for any interest the person or persons acting in concert
4 hold in the entity. This subsection (3)(p)(ii) does not apply to that
5 part of the transfer involving property received that is the real
6 property interest that the person or persons originally contributed to
7 the entity or when one or more persons who did not contribute real
8 property or belong to the entity at a time when real property was
9 purchased receive cash or personal property in exchange for that person
10 or persons' interest in the entity. The real estate excise tax under
11 this subsection (3)(p)(ii) is imposed upon the person or persons who
12 previously held a controlling interest in the entity.

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

16 **Sec. 208.** RCW 82.45.033 and 1993 sp.s. c 25 s 505 are each amended
17 to read as follows:

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

20 ~~((+1))~~ (a) In the case of a corporation, either fifty percent or
21 more of the total combined voting power of all classes of stock of the
22 corporation entitled to vote, or fifty percent of the capital, profits,
23 or beneficial interest in the voting stock of the corporation; and

24 ~~((+2))~~ (b) In the case of a partnership, association, trust, or
25 other entity, fifty percent or more of the capital, profits, or
26 beneficial interest in such partnership, association, trust, or other
27 entity.

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

31 (a) In the transfer or acquisition of a controlling interest as
32 defined in subsection (1)(a) of this section, either against the
33 corporation in which a controlling interest is transferred or acquired,
34 against the person or persons who acquired the controlling interest in
35 the corporation or, when the corporation is not a publicly traded
36 company, against the person or persons who transferred the controlling
37 interest in the corporation; and

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

3 (b) Interest imposed after December 31, 1998, (~~shall be~~) is
4 computed on a monthly basis at the rate as computed under RCW
5 82.32.050(2). The rate so computed (~~shall~~) must be adjusted on the
6 first day of January of each year for use in computing interest for
7 that calendar year. The department (~~of revenue shall~~) must provide
8 written notification to the county treasurers of the variable rate on
9 or before December 1st of the year preceding the calendar year in which
10 the rate applies.

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

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

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

30 ~~(b) Either the transferor or transferee notifies the department of~~
31 ~~revenue in writing of the occurrence of the sale within thirty days~~
32 ~~following the date of the sale)).~~

33 (4) If upon examination of any affidavits or from other information
34 obtained by the department or its agents it appears that all or a
35 portion of the tax is unpaid, the department (~~shall~~) must assess
36 against the taxpayer the additional amount found to be due plus
37 interest and penalties as provided in subsections (1) and (2) of this
38 section. The department (~~shall~~) must notify the taxpayer by mail, or

1 electronically as provided in RCW 82.32.135, of the additional amount
2 and the same (~~shall~~) becomes due and (~~shall~~) must be paid within
3 thirty days from the date of the notice, or within such further time as
4 the department may provide.

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

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

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

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

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

16 **Sec. 212.** RCW 82.45.220 and 2005 c 326 s 3 are each amended to
17 read as follows:

18 (1) An organization that fails to report a transfer of the
19 controlling interest in the organization under RCW 43.07.390 to the
20 secretary of state and is later determined to be subject to real estate
21 excise taxes due to the transfer, (~~shall be~~) is subject to the
22 provisions of RCW 82.45.100 as well as the evasion penalty in RCW
23 82.32.090(~~(6)~~) (7).

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

28 **Sec. 213.** RCW 43.07.390 and 2005 c 326 s 2 are each amended to
29 read as follows:

30 (1)(a) The secretary of state (~~shall~~) must adopt rules requiring
31 any entity that is required to file an annual report with the secretary
32 of state, including entities under Titles 23, 23B, 24, and 25 RCW, to
33 disclose: (i) Any transfer (~~in~~) of the controlling interest (~~of~~)
34 in the entity (~~and any interest in real property~~); and (ii) the
35 granting of any option to acquire an interest in the entity if the

1 exercise of the option would result in a sale as defined in RCW
2 82.45.010(2).

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

5 (2) This information (~~shall~~) must be made available to the
6 department of revenue upon request for the purposes of tracking the
7 transfer of the controlling interest in entities owning real property
8 and to determine when the real estate excise tax is applicable in such
9 cases.

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

12 PART III

13 **Modifying the First Mortgage Deduction**

14 **Sec. 301.** RCW 82.04.4292 and 1980 c 37 s 12 are each amended to
15 read as follows:

16 (1) In computing tax there may be deducted from the measure of tax
17 by those engaged in banking, loan, security or other financial
18 businesses, (~~amounts derived from~~) interest received on investments
19 or loans primarily secured by first mortgages or trust deeds on
20 nontransient residential properties.

21 (2) Interest deductible under this section includes the portion of
22 fees charged to borrowers, including points and loan origination fees,
23 that is recognized over the life of the loan as an adjustment to yield
24 in the taxpayer's books and records according to generally accepted
25 accounting principles.

26 (3) Subsections (1) and (2) of this section notwithstanding, the
27 following is a nonexclusive list of items that are not deductible under
28 this section:

29 (a) Fees for specific services such as: Document preparation fees;
30 finder fees; brokerage fees; title examination fees; fees for credit
31 checks; notary fees; loan application fees; interest lock-in fees if
32 the loan is not made; servicing fees; and similar fees or amounts;

33 (b) Fees received in consideration for an agreement to make funds
34 available for a specific period of time at specified terms, commonly
35 referred to as commitment fees;

1 (c) Any other fees, or portion of a fee, that is not recognized
2 over the life of the loan as an adjustment to yield in the taxpayer's
3 books and records according to generally accepted accounting
4 principles;

5 (d) Gains on the sale of valuable rights such as service release
6 premiums, which are amounts received when servicing rights are sold;
7 and

8 (e) Gains on the sale of loans, except deferred loan origination
9 fees and points deductible under subsection (2) of this section, are
10 not to be considered part of the proceeds of sale of the loan.

11 (4) Notwithstanding subsection (3) of this section, in computing
12 tax there may be deducted from the measure of tax by those engaged in
13 banking, loan, security, or other financial businesses, amounts
14 received for servicing loans primarily secured by first mortgages or
15 trust deeds on nontransient residential properties, including such
16 loans that secure mortgage-backed or mortgage-related securities, but
17 only if:

18 (a)(i) The loans were originated by the person claiming a deduction
19 under this subsection (4) and that person either sold the loans on the
20 secondary market or securitized the loans and sold the securities on
21 the secondary market; or

22 (ii)(A) The person claiming a deduction under this subsection (4)
23 acquired the loans from the person that originated the loans through a
24 merger or acquisition of substantially all of the assets of the person
25 who originated the loans, or the person claiming a deduction under this
26 subsection (4) is affiliated with the person that originated the loans.
27 For purposes of this subsection, "affiliated" means under common
28 control. "Control" means the possession, directly or indirectly, of
29 more than fifty percent of the power to direct or cause the direction
30 of the management and policies of a person, whether through the
31 ownership of voting shares, by contract, or otherwise; and

32 (B) Either the person who originated the loans or the person
33 claiming a deduction under this subsection (4) sold the loans on the
34 secondary market or securitized the loans and sold the securities on
35 the secondary market; and

36 (b) The amounts received for servicing the loans are determined by
37 a percentage of the interest paid by the borrower and are only received
38 if the borrower makes interest payments.

1 NEW SECTION. **Sec. 501.** (1)(a) In 1967, the legislature amended
2 RCW 82.04.260 in chapter 149, Laws of 1967 ex. sess. to authorize a
3 preferential business and occupation tax rate for slaughtering,
4 breaking, and/or processing perishable meat products and/or selling the
5 same at wholesale. The legislature finds that RCW 82.04.260(4) was
6 interpreted by the state supreme court on January 13, 2005, in *Agrilink*
7 *Foods, Inc. v. Department of Revenue*, 153 Wn.2d 392 (2005). The
8 supreme court held that the preferential business and occupation tax
9 rate on the slaughtering, breaking, and/or processing of perishable
10 meat products applied to the processing of perishable meat products
11 into nonperishable finished products, such as canned food.

12 (b) The legislature intends to narrow the exemption provided for
13 slaughtering, breaking, and/or processing perishable meat products
14 and/or selling such products at wholesale by requiring that the end
15 product be a perishable meat product; a nonperishable meat product that
16 is comprised primarily of animal carcass by weight or volume, other
17 than a canned meat product; or a meat by-product.

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

25 (b) The legislature finds that the rationale of the *Agrilink*
26 decision, if applied to these tax preferences, could result in
27 preferential tax treatment for any processed food product that
28 contained any fresh fruit or vegetable as an ingredient, however small
29 the amount.

30 (c) The legislature intends to narrow the tax preference provided
31 to fruit and vegetable manufacturers by requiring that the end product
32 be comprised either (i) exclusively of fruits and/or vegetables, or
33 (ii) of any combination of fruits, vegetables, and certain other
34 substances that, cumulatively, may not exceed the amount of fruits and
35 vegetables contained in the product measured by weight or volume.

36 NEW SECTION. **Sec. 502.** A new section is added to chapter 82.04
37 RCW to read as follows:

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

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

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

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

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

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

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

31 (c) Hides, tallow, meat meal, and other similar meat by-products,
32 if such products are derived in part from animals and manufactured by
33 the seller in a rendering plant; as to such persons the tax imposed is
34 equal to the gross proceeds derived from such sales multiplied by the
35 rate of 0.138 percent.

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

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

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

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

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

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

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

9 (B) Products, such as jerky, sausage, and other cured meat
10 products, that are comprised primarily of animal carcass by weight or
11 volume and may also contain water; nitrates; nitrites; acids; binders
12 and extenders; natural or synthetic casings; colorings; flavorings such
13 as soy sauce, liquid smoke, seasonings, citric acid, sugar, molasses,
14 corn syrup, and vinegar; and similar substances.

15 (ii) Except as provided in (e)(i) of this subsection (3), "meat
16 products" does not include products containing any cereal grains or
17 cereal-grain products, dairy products, legumes and legume products,
18 fruit or vegetable products as defined in RCW 82.04.260, and similar
19 ingredients, unless the ingredient is used as a flavoring. For
20 purposes of this subsection, "flavoring" means a substance that
21 contains the flavoring constituents derived from a spice, fruit or
22 fruit juice, vegetable or vegetable juice, edible yeast, herb, bark,
23 bud, root, leaf, or any other edible substance of plant origin, whose
24 primary function in food is flavoring or seasoning rather than
25 nutritional, and which may legally appear as "natural flavor,"
26 "flavor," or "flavorings" in the ingredient statement on the label of
27 the meat product.

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

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

32 (g) "Rendering plant" means any place of business or location where
33 dead animals or any part or portion thereof, or packing house refuse,
34 are processed for the purpose of obtaining the hide, skin, grease
35 residue, or any other by-product whatsoever.

36 **Sec. 503.** RCW 82.04.4266 and 2006 c 354 s 3 are each amended to
37 read as follows:

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

3 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
4 preserving, freezing, processing, or dehydrating fresh fruits or
5 vegetables; or

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

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

15 (i) Products comprised exclusively of fruits, vegetables, or both;
16 and

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

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

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

26 **Sec. 504.** RCW 82.04.4266 and 2010 c 114 (SHB 3066) s 111 are each
27 amended to read as follows:

28 (1) This chapter does not apply to the value of products or the
29 gross proceeds of sales derived from:

30 (a) Manufacturing fruit(~~s~~) or vegetable(~~s~~) products by canning,
31 preserving, freezing, processing, or dehydrating fresh fruits or
32 vegetables; or

33 (b) Selling at wholesale fruit(~~s~~) or vegetable(~~s~~) products
34 manufactured by the seller by canning, preserving, freezing,
35 processing, or dehydrating fresh fruits or vegetables and sold to
36 purchasers who transport in the ordinary course of business the goods
37 out of this state. A person taking an exemption under this subsection

1 (1)(b) must keep and preserve records for the period required by RCW
2 82.32.070 establishing that the goods were transported by the purchaser
3 in the ordinary course of business out of this state.

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

5 (i) Products comprised exclusively of fruits, vegetables, or both;
6 and

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

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

15 (3) A person claiming the exemption provided in this section must
16 file a complete annual survey with the department under RCW 82.32.---
17 (section 102, chapter 114 (SHB 3066), Laws of 2010).

18 ((+3+)) (4) This section expires July 1, 2012.

19 **Sec. 505.** RCW 82.04.260 and 2009 c 479 s 64, 2009 c 461 s 1, and
20 2009 c 162 s 34 are each reenacted and amended to read as follows:

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

23 (a) Wheat into flour, barley into pearl barley, soybeans into
24 soybean oil, canola into canola oil, canola meal, or canola by-
25 products, or sunflower seeds into sunflower oil; as to such persons the
26 amount of tax with respect to such business (~~shall be~~) is equal to
27 the value of the flour, pearl barley, oil, canola meal, or canola by-
28 product manufactured, multiplied by the rate of 0.138 percent;

29 (b) Beginning July 1, 2012, seafood products that remain in a raw,
30 raw frozen, or raw salted state at the completion of the manufacturing
31 by that person; or selling manufactured seafood products that remain in
32 a raw, raw frozen, or raw salted state at the completion of the
33 manufacturing, to purchasers who transport in the ordinary course of
34 business the goods out of this state; as to such persons the amount of
35 tax with respect to such business (~~shall be~~) is equal to the value of
36 the products manufactured or the gross proceeds derived from such
37 sales, multiplied by the rate of 0.138 percent. Sellers must keep and

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

4 (c) Beginning July 1, 2012, dairy products that as of September 20,
5 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
6 including by-products from the manufacturing of the dairy products such
7 as whey and casein; or selling the same to purchasers who transport in
8 the ordinary course of business the goods out of state; as to such
9 persons the tax imposed (~~(shall be)~~) is equal to the value of the
10 products manufactured or the gross proceeds derived from such sales
11 multiplied by the rate of 0.138 percent. Sellers must keep and
12 preserve records for the period required by RCW 82.32.070 establishing
13 that the goods were transported by the purchaser in the ordinary course
14 of business out of this state;

15 (d)(i) Beginning July 1, 2012, fruit(~~(s)~~) or vegetable(~~(s)~~)
16 products by canning, preserving, freezing, processing, or dehydrating
17 fresh fruits or vegetables, or selling at wholesale fruit(~~(s)~~) or
18 vegetable(~~(s)~~) products manufactured by the seller by canning,
19 preserving, freezing, processing, or dehydrating fresh fruits or
20 vegetables and sold to purchasers who transport in the ordinary course
21 of business the goods out of this state; as to such persons the amount
22 of tax with respect to such business (~~(shall be)~~) is equal to the value
23 of the products manufactured or the gross proceeds derived from such
24 sales multiplied by the rate of 0.138 percent. Sellers must keep and
25 preserve records for the period required by RCW 82.32.070 establishing
26 that the goods were transported by the purchaser in the ordinary course
27 of business out of this state;

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

30 (A) Products comprised exclusively of fruits, vegetables, or both;
31 or

32 (B) Products comprised of fruits, vegetables, or both, and which
33 may also contain water, sugar, salt, seasonings, preservatives,
34 binders, stabilizers, flavorings, yeast, and similar substances.
35 However, the amount of all ingredients contained in the product, other
36 than fruits, vegetables, and water, may not exceed the amount of fruits
37 and vegetables contained in the product measured by weight or volume;

1 (iii) "Fruit and vegetable products" includes only products that
2 are intended for human consumption as food or animal consumption as
3 feed;

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

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

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

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

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

27 (~~5~~) Upon every person engaging within this state in the business
28 of acting as a travel agent or tour operator; as to such persons the
29 amount of the tax with respect to such activities (~~shall be~~) is equal
30 to the gross income derived from such activities multiplied by the rate
31 of 0.275 percent.

32 (~~6~~) (5) Upon every person engaging within this state in
33 business as an international steamship agent, international customs
34 house broker, international freight forwarder, vessel and/or cargo
35 charter broker in foreign commerce, and/or international air cargo
36 agent; as to such persons the amount of the tax with respect to only
37 international activities (~~shall be~~) is equal to the gross income
38 derived from such activities multiplied by the rate of 0.275 percent.

1 ~~((+7))~~ (6) Upon every person engaging within this state in the
2 business of stevedoring and associated activities pertinent to the
3 movement of goods and commodities in waterborne interstate or foreign
4 commerce; as to such persons the amount of tax with respect to such
5 business ~~((shall be))~~ is equal to the gross proceeds derived from such
6 activities multiplied by the rate of 0.275 percent. Persons subject to
7 taxation under this subsection ~~((shall be))~~ are exempt from payment of
8 taxes imposed by chapter 82.16 RCW for that portion of their business
9 subject to taxation under this subsection. Stevedoring and associated
10 activities pertinent to the conduct of goods and commodities in
11 waterborne interstate or foreign commerce are defined as all activities
12 of a labor, service or transportation nature whereby cargo may be
13 loaded or unloaded to or from vessels or barges, passing over, onto or
14 under a wharf, pier, or similar structure; cargo may be moved to a
15 warehouse or similar holding or storage yard or area to await further
16 movement in import or export or may move to a consolidation freight
17 station and be stuffed, unstuffed, containerized, separated or
18 otherwise segregated or aggregated for delivery or loaded on any mode
19 of transportation for delivery to its consignee. Specific activities
20 included in this definition are: Wharfage, handling, loading,
21 unloading, moving of cargo to a convenient place of delivery to the
22 consignee or a convenient place for further movement to export mode;
23 documentation services in connection with the receipt, delivery,
24 checking, care, custody and control of cargo required in the transfer
25 of cargo; imported automobile handling prior to delivery to consignee;
26 terminal stevedoring and incidental vessel services, including but not
27 limited to plugging and unplugging refrigerator service to containers,
28 trailers, and other refrigerated cargo receptacles, and securing ship
29 hatch covers.

30 ~~((+8))~~ (7)(a) Upon every person engaging within this state in the
31 business of disposing of low-level waste, as defined in RCW 43.145.010;
32 as to such persons the amount of the tax with respect to such business
33 ~~((shall be))~~ is equal to the gross income of the business, excluding
34 any fees imposed under chapter 43.200 RCW, multiplied by the rate of
35 3.3 percent.

36 (b) If the gross income of the taxpayer is attributable to
37 activities both within and without this state, the gross income

1 attributable to this state (~~(shall)~~) must be determined in accordance
2 with the methods of apportionment required under RCW 82.04.460.

3 ~~((+9))~~ (8) Upon every person engaging within this state as an
4 insurance producer or title insurance agent licensed under chapter
5 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
6 to such persons, the amount of the tax with respect to such licensed
7 activities (~~(shall be)~~) is equal to the gross income of such business
8 multiplied by the rate of 0.484 percent.

9 ~~((+10))~~ (9) Upon every person engaging within this state in
10 business as a hospital, as defined in chapter 70.41 RCW, that is
11 operated as a nonprofit corporation or by the state or any of its
12 political subdivisions, as to such persons, the amount of tax with
13 respect to such activities (~~(shall be)~~) is equal to the gross income of
14 the business multiplied by the rate of 0.75 percent through June 30,
15 1995, and 1.5 percent thereafter.

16 ~~((+11))~~ (10)(a) Beginning October 1, 2005, upon every person
17 engaging within this state in the business of manufacturing commercial
18 airplanes, or components of such airplanes, or making sales, at retail
19 or wholesale, of commercial airplanes or components of such airplanes,
20 manufactured by the seller, as to such persons the amount of tax with
21 respect to such business (~~(shall)~~), in the case of manufacturers,
22 ~~((be))~~ is equal to the value of the product manufactured and the gross
23 proceeds of sales of the product manufactured, or in the case of
24 processors for hire, ~~((be))~~ is equal to the gross income of the
25 business, multiplied by the rate of:

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

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

29 (b) Beginning July 1, 2008, upon every person who is not eligible
30 to report under the provisions of (a) of this subsection ~~((+11))~~ (10)
31 and is engaging within this state in the business of manufacturing
32 tooling specifically designed for use in manufacturing commercial
33 airplanes or components of such airplanes, or making sales, at retail
34 or wholesale, of such tooling manufactured by the seller, as to such
35 persons the amount of tax with respect to such business (~~(shall)~~), in
36 the case of manufacturers, ~~((be))~~ is equal to the value of the product
37 manufactured and the gross proceeds of sales of the product

1 manufactured, or in the case of processors for hire, ~~((be))~~ is equal to
2 the gross income of the business, multiplied by the rate of 0.2904
3 percent.

4 (c) For the purposes of this subsection ~~((+11+))~~ (10), "commercial
5 airplane" and "component" have the same meanings as provided in RCW
6 82.32.550.

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

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

12 ~~((+12+))~~ (11)(a) Until July 1, 2024, upon every person engaging
13 within this state in the business of extracting timber or extracting
14 for hire timber; as to such persons the amount of tax with respect to
15 the business ~~((shall))~~, in the case of extractors, ~~((be))~~ is equal to
16 the value of products, including by-products, extracted, or in the case
17 of extractors for hire, ~~((be))~~ is equal to the gross income of the
18 business, multiplied by the rate of 0.4235 percent from July 1, 2006,
19 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
20 June 30, 2024.

21 (b) Until July 1, 2024, upon every person engaging within this
22 state in the business of manufacturing or processing for hire: (i)
23 Timber into timber products or wood products; or (ii) timber products
24 into other timber products or wood products; as to such persons the
25 amount of the tax with respect to the business ~~((shall))~~, in the case
26 of manufacturers, ~~((be))~~ is equal to the value of products, including
27 by-products, manufactured, or in the case of processors for hire,
28 ~~((be))~~ is equal to the gross income of the business, multiplied by the
29 rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and
30 0.2904 percent from July 1, 2007, through June 30, 2024.

31 (c) Until July 1, 2024, upon every person engaging within this
32 state in the business of selling at wholesale: (i) Timber extracted by
33 that person; (ii) timber products manufactured by that person from
34 timber or other timber products; or (iii) wood products manufactured by
35 that person from timber or timber products; as to such persons the
36 amount of the tax with respect to the business ~~((shall-be))~~ is equal to
37 the gross proceeds of sales of the timber, timber products, or wood

1 products multiplied by the rate of 0.4235 percent from July 1, 2006,
2 through June 30, 2007, and 0.2904 percent from July 1, 2007, through
3 June 30, 2024.

4 (d) Until July 1, 2024, upon every person engaging within this
5 state in the business of selling standing timber; as to such persons
6 the amount of the tax with respect to the business (~~(shall be)~~) is
7 equal to the gross income of the business multiplied by the rate of
8 0.2904 percent. For purposes of this subsection (~~((+12+))~~) (11)(d),
9 "selling standing timber" means the sale of timber apart from the land,
10 where the buyer is required to sever the timber within thirty months
11 from the date of the original contract, regardless of the method of
12 payment for the timber and whether title to the timber transfers
13 before, upon, or after severance.

14 (e) For purposes of this subsection, the following definitions
15 apply:

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

19 (ii) "Paper and paper products" means products made of interwoven
20 cellulosic fibers held together largely by hydrogen bonding. "Paper
21 and paper products" includes newsprint; office, printing, fine, and
22 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
23 kraft bag, construction, and other kraft industrial papers; paperboard,
24 liquid packaging containers, containerboard, corrugated, and solid-
25 fiber containers including linerboard and corrugated medium; and
26 related types of cellulosic products containing primarily, by weight or
27 volume, cellulosic materials. "Paper and paper products" does not
28 include books, newspapers, magazines, periodicals, and other printed
29 publications, advertising materials, calendars, and similar types of
30 printed materials.

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

37 (iv) "Timber" means forest trees, standing or down, on privately or

1 publicly owned land. "Timber" does not include Christmas trees that
2 are cultivated by agricultural methods or short-rotation hardwoods as
3 defined in RCW 84.33.035.

4 (v) "Timber products" means:

5 (A) Logs, wood chips, sawdust, wood waste, and similar products
6 obtained wholly from the processing of timber, short-rotation hardwoods
7 as defined in RCW 84.33.035, or both;

8 (B) Pulp, including market pulp and pulp derived from recovered
9 paper or paper products; and

10 (C) Recycled paper, but only when used in the manufacture of
11 biocomposite surface products.

12 (vi) "Wood products" means paper and paper products; dimensional
13 lumber; engineered wood products such as particleboard, oriented strand
14 board, medium density fiberboard, and plywood; wood doors; wood
15 windows; and biocomposite surface products.

16 ((+13)) (12) Upon every person engaging within this state in
17 inspecting, testing, labeling, and storing canned salmon owned by
18 another person, as to such persons, the amount of tax with respect to
19 such activities (~~shall be~~) is equal to the gross income derived from
20 such activities multiplied by the rate of 0.484 percent.

21 ((+14)) (13) Upon every person engaging within this state in the
22 business of printing a newspaper, publishing a newspaper, or both, the
23 amount of tax on such business is equal to the gross income of the
24 business multiplied by the rate of 0.2904 percent.

25 **Sec. 506.** RCW 82.04.260 and 2010 c 114 (SHB 3066) s 107 are each
26 amended to read as follows:

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

29 (a) Wheat into flour, barley into pearl barley, soybeans into
30 soybean oil, canola into canola oil, canola meal, or canola by-
31 products, or sunflower seeds into sunflower oil; as to such persons the
32 amount of tax with respect to such business is equal to the value of
33 the flour, pearl barley, oil, canola meal, or canola by-product
34 manufactured, multiplied by the rate of 0.138 percent;

35 (b) Beginning July 1, 2012, seafood products that remain in a raw,
36 raw frozen, or raw salted state at the completion of the manufacturing
37 by that person; or selling manufactured seafood products that remain in

1 a raw, raw frozen, or raw salted state at the completion of the
2 manufacturing, to purchasers who transport in the ordinary course of
3 business the goods out of this state; as to such persons the amount of
4 tax with respect to such business is equal to the value of the products
5 manufactured or the gross proceeds derived from such sales, multiplied
6 by the rate of 0.138 percent. Sellers must keep and preserve records
7 for the period required by RCW 82.32.070 establishing that the goods
8 were transported by the purchaser in the ordinary course of business
9 out of this state;

10 (c) Beginning July 1, 2012, dairy products that as of September 20,
11 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135,
12 including by-products from the manufacturing of the dairy products such
13 as whey and casein; or selling the same to purchasers who transport in
14 the ordinary course of business the goods out of state; as to such
15 persons the tax imposed is equal to the value of the products
16 manufactured or the gross proceeds derived from such sales multiplied
17 by the rate of 0.138 percent. Sellers must keep and preserve records
18 for the period required by RCW 82.32.070 establishing that the goods
19 were transported by the purchaser in the ordinary course of business
20 out of this state;

21 (d)(i) Beginning July 1, 2012, fruit((s)) or vegetable((s))
22 products by canning, preserving, freezing, processing, or dehydrating
23 fresh fruits or vegetables, or selling at wholesale fruit((s)) or
24 vegetable((s)) products manufactured by the seller by canning,
25 preserving, freezing, processing, or dehydrating fresh fruits or
26 vegetables and sold to purchasers who transport in the ordinary course
27 of business the goods out of this state; as to such persons the amount
28 of tax with respect to such business is equal to the value of the
29 products manufactured or the gross proceeds derived from such sales
30 multiplied by the rate of 0.138 percent. Sellers must keep and
31 preserve records for the period required by RCW 82.32.070 establishing
32 that the goods were transported by the purchaser in the ordinary course
33 of business out of this state;

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

36 (A) Products comprised exclusively of fruits, vegetables, or both;
37 or

1 (B) Products comprised of fruits, vegetables, or both, and which
2 may also contain water, sugar, salt, seasonings, preservatives,
3 binders, stabilizers, flavorings, yeast, and similar substances.
4 However, the amount of all ingredients contained in the product, other
5 than fruits, vegetables, and water, may not exceed the amount of fruits
6 and vegetables contained in the product measured by weight or volume;

7 (iii) "Fruit and vegetable products" includes only products that
8 are intended for human consumption as food or animal consumption as
9 feed;

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

15 (f) Wood biomass fuel as defined in RCW 82.29A.135; as to such
16 persons the amount of tax with respect to the business is equal to the
17 value of wood biomass fuel manufactured, multiplied by the rate of
18 0.138 percent.

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

23 (3) Upon every nonprofit corporation and nonprofit association
24 engaging within this state in research and development, as to such
25 corporations and associations, the amount of tax with respect to such
26 activities is equal to the gross income derived from such activities
27 multiplied by the rate of 0.484 percent.

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

33 (5)) Upon every person engaging within this state in the business
34 of acting as a travel agent or tour operator; as to such persons the
35 amount of the tax with respect to such activities is equal to the gross
36 income derived from such activities multiplied by the rate of 0.275
37 percent.

1 (~~(+6)~~) (5) Upon every person engaging within this state in
2 business as an international steamship agent, international customs
3 house broker, international freight forwarder, vessel and/or cargo
4 charter broker in foreign commerce, and/or international air cargo
5 agent; as to such persons the amount of the tax with respect to only
6 international activities is equal to the gross income derived from such
7 activities multiplied by the rate of 0.275 percent.

8 (~~(+7)~~) (6) Upon every person engaging within this state in the
9 business of stevedoring and associated activities pertinent to the
10 movement of goods and commodities in waterborne interstate or foreign
11 commerce; as to such persons the amount of tax with respect to such
12 business is equal to the gross proceeds derived from such activities
13 multiplied by the rate of 0.275 percent. Persons subject to taxation
14 under this subsection are exempt from payment of taxes imposed by
15 chapter 82.16 RCW for that portion of their business subject to
16 taxation under this subsection. Stevedoring and associated activities
17 pertinent to the conduct of goods and commodities in waterborne
18 interstate or foreign commerce are defined as all activities of a
19 labor, service or transportation nature whereby cargo may be loaded or
20 unloaded to or from vessels or barges, passing over, onto or under a
21 wharf, pier, or similar structure; cargo may be moved to a warehouse or
22 similar holding or storage yard or area to await further movement in
23 import or export or may move to a consolidation freight station and be
24 stuffed, unstuffed, containerized, separated or otherwise segregated or
25 aggregated for delivery or loaded on any mode of transportation for
26 delivery to its consignee. Specific activities included in this
27 definition are: Wharfage, handling, loading, unloading, moving of
28 cargo to a convenient place of delivery to the consignee or a
29 convenient place for further movement to export mode; documentation
30 services in connection with the receipt, delivery, checking, care,
31 custody and control of cargo required in the transfer of cargo;
32 imported automobile handling prior to delivery to consignee; terminal
33 stevedoring and incidental vessel services, including but not limited
34 to plugging and unplugging refrigerator service to containers,
35 trailers, and other refrigerated cargo receptacles, and securing ship
36 hatch covers.

37 (~~(+8)~~) (7)(a) Upon every person engaging within this state in the
38 business of disposing of low-level waste, as defined in RCW 43.145.010;

1 as to such persons the amount of the tax with respect to such business
2 is equal to the gross income of the business, excluding any fees
3 imposed under chapter 43.200 RCW, multiplied by the rate of 3.3
4 percent.

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

9 ~~((+9))~~ (8) Upon every person engaging within this state as an
10 insurance producer or title insurance agent licensed under chapter
11 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as
12 to such persons, the amount of the tax with respect to such licensed
13 activities is equal to the gross income of such business multiplied by
14 the rate of 0.484 percent.

15 ~~((+10))~~ (9) Upon every person engaging within this state in
16 business as a hospital, as defined in chapter 70.41 RCW, that is
17 operated as a nonprofit corporation or by the state or any of its
18 political subdivisions, as to such persons, the amount of tax with
19 respect to such activities is equal to the gross income of the business
20 multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5
21 percent thereafter.

22 ~~((+11))~~ (10)(a) Beginning October 1, 2005, upon every person
23 engaging within this state in the business of manufacturing commercial
24 airplanes, or components of such airplanes, or making sales, at retail
25 or wholesale, of commercial airplanes or components of such airplanes,
26 manufactured by the seller, as to such persons the amount of tax with
27 respect to such business is, in the case of manufacturers, equal to the
28 value of the product manufactured and the gross proceeds of sales of
29 the product manufactured, or in the case of processors for hire, equal
30 to the gross income of the business, multiplied by the rate of:

- 31 (i) 0.4235 percent from October 1, 2005, through June 30, 2007; and
- 32 (ii) 0.2904 percent beginning July 1, 2007.

33 (b) Beginning July 1, 2008, upon every person who is not eligible
34 to report under the provisions of (a) of this subsection ~~((+11))~~ (10)
35 and is engaging within this state in the business of manufacturing
36 tooling specifically designed for use in manufacturing commercial
37 airplanes or components of such airplanes, or making sales, at retail
38 or wholesale, of such tooling manufactured by the seller, as to such

1 persons the amount of tax with respect to such business is, in the case
2 of manufacturers, equal to the value of the product manufactured and
3 the gross proceeds of sales of the product manufactured, or in the case
4 of processors for hire, be equal to the gross income of the business,
5 multiplied by the rate of 0.2904 percent.

6 (c) For the purposes of this subsection (~~((+11+))~~) (10), "commercial
7 airplane" and "component" have the same meanings as provided in RCW
8 82.32.550.

9 (d) In addition to all other requirements under this title, a
10 person reporting under the tax rate provided in this subsection
11 (~~((+11+))~~) (10) must file a complete annual report with the department
12 under RCW 82.32.--- (section 103, chapter 114 (SHB 3066), Laws of
13 2010).

14 (e) This subsection (~~((+11+))~~) (10) does not apply on and after July
15 1, 2024.

16 (~~((+12+))~~) (11)(a) Until July 1, 2024, upon every person engaging
17 within this state in the business of extracting timber or extracting
18 for hire timber; as to such persons the amount of tax with respect to
19 the business is, in the case of extractors, equal to the value of
20 products, including by-products, extracted, or in the case of
21 extractors for hire, equal to the gross income of the business,
22 multiplied by the rate of 0.4235 percent from July 1, 2006, through
23 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
24 2024.

25 (b) Until July 1, 2024, upon every person engaging within this
26 state in the business of manufacturing or processing for hire: (i)
27 Timber into timber products or wood products; or (ii) timber products
28 into other timber products or wood products; as to such persons the
29 amount of the tax with respect to the business is, in the case of
30 manufacturers, equal to the value of products, including by-products,
31 manufactured, or in the case of processors for hire, equal to the gross
32 income of the business, multiplied by the rate of 0.4235 percent from
33 July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1,
34 2007, through June 30, 2024.

35 (c) Until July 1, 2024, upon every person engaging within this
36 state in the business of selling at wholesale: (i) Timber extracted by
37 that person; (ii) timber products manufactured by that person from
38 timber or other timber products; or (iii) wood products manufactured by

1 that person from timber or timber products; as to such persons the
2 amount of the tax with respect to the business is equal to the gross
3 proceeds of sales of the timber, timber products, or wood products
4 multiplied by the rate of 0.4235 percent from July 1, 2006, through
5 June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30,
6 2024.

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

17 (e) For purposes of this subsection, the following definitions
18 apply:

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

22 (ii) "Paper and paper products" means products made of interwoven
23 cellulosic fibers held together largely by hydrogen bonding. "Paper
24 and paper products" includes newsprint; office, printing, fine, and
25 pressure-sensitive papers; paper napkins, towels, and toilet tissue;
26 kraft bag, construction, and other kraft industrial papers; paperboard,
27 liquid packaging containers, containerboard, corrugated, and solid-
28 fiber containers including linerboard and corrugated medium; and
29 related types of cellulosic products containing primarily, by weight or
30 volume, cellulosic materials. "Paper and paper products" does not
31 include books, newspapers, magazines, periodicals, and other printed
32 publications, advertising materials, calendars, and similar types of
33 printed materials.

34 (iii) "Recycled paper" means paper and paper products having fifty
35 percent or more of their fiber content that comes from postconsumer
36 waste. For purposes of this subsection (~~((+12+))~~) (11)(e)(iii),
37 "postconsumer waste" means a finished material that would normally be

1 disposed of as solid waste, having completed its life cycle as a
2 consumer item.

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

7 (v) "Timber products" means:

8 (A) Logs, wood chips, sawdust, wood waste, and similar products
9 obtained wholly from the processing of timber, short-rotation hardwoods
10 as defined in RCW 84.33.035, or both;

11 (B) Pulp, including market pulp and pulp derived from recovered
12 paper or paper products; and

13 (C) Recycled paper, but only when used in the manufacture of
14 biocomposite surface products.

15 (vi) "Wood products" means paper and paper products; dimensional
16 lumber; engineered wood products such as particleboard, oriented strand
17 board, medium density fiberboard, and plywood; wood doors; wood
18 windows; and biocomposite surface products.

19 (f) Except for small harvesters as defined in RCW 84.33.035, a
20 person reporting under the tax rate provided in this subsection
21 (~~((+12+))~~) (11) must file a complete annual survey with the department
22 under RCW 82.32.--- (section 102, chapter 114 (SHB 3066), Laws of
23 2010).

24 (~~((+13+))~~) (12) Upon every person engaging within this state in
25 inspecting, testing, labeling, and storing canned salmon owned by
26 another person, as to such persons, the amount of tax with respect to
27 such activities is equal to the gross income derived from such
28 activities multiplied by the rate of 0.484 percent.

29 (~~((+14+))~~) (13)(a) Upon every person engaging within this state in
30 the business of printing a newspaper, publishing a newspaper, or both,
31 the amount of tax on such business is equal to the gross income of the
32 business multiplied by the rate of 0.2904 percent.

33 (b) A person reporting under the tax rate provided in this
34 subsection (~~((+14+))~~) (13) must file a complete annual report with the
35 department under RCW 82.32.--- (section 103, chapter 114 (SHB 3066),
36 Laws of 2010).

1 (3) Until July 1, 2024, upon every person classified by the federal
2 aviation administration as a federal aviation regulation part 145
3 certificated repair station and that is engaging within this state in
4 the business of making sales at retail that are exempt from the tax
5 imposed under chapter 82.08 RCW by reason of RCW 82.08.0261,
6 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with
7 respect to such business is equal to the gross proceeds of sales of the
8 business, multiplied by the rate of .2904 percent.

9 **Sec. 509.** RCW 82.04.250 and 2007 c 54 s 5 are each amended to read
10 as follows:

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

16 (2) Upon every person engaging within this state in the business of
17 making sales at retail that are exempt from the tax imposed under
18 chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or
19 82.08.0263, except persons taxable under RCW 82.04.260(~~(+11)~~) (10), as
20 to such persons, the amount of tax with respect to such business
21 (~~(shall be)~~) is equal to the gross proceeds of sales of the business,
22 multiplied by the rate of 0.484 percent.

23 **Sec. 510.** RCW 82.04.261 and 2007 c 54 s 7 and 2007 c 48 s 4 are
24 each reenacted and amended to read as follows:

25 (1) In addition to the taxes imposed under RCW 82.04.260(~~(+12)~~)
26 (11), a surcharge is imposed on those persons who are subject to any of
27 the taxes imposed under RCW 82.04.260(~~(+12)~~) (11). Except as
28 otherwise provided in this section, the surcharge is equal to 0.052
29 percent. The surcharge is added to the rates provided in RCW
30 82.04.260(~~(+12)~~) (11) (a), (b), (c), and (d). The surcharge and this
31 section expire July 1, 2024.

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

35 (3)(a) The surcharge imposed under this section (~~(shall be)~~) is
36 suspended if:

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

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

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

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

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

34 (b) The department (~~shall~~) must adjust the surcharge by an amount
35 that the department estimates will cause the amount of funds deposited
36 into the forest and fish support account for the state fiscal year that
37 begins July 1st and that includes the beginning of the federal fiscal
38 year for which the federal appropriation is made, to be reduced by

1 twice the amount of the federal appropriation for participation in
2 forest and fish report-related activities by federally recognized
3 Indian tribes located within the geographical boundaries of the state
4 of Washington.

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

9 (d) The surcharge (~~shall be~~) is imposed again at the rate
10 provided in subsection (1) of this section on the first day of the
11 following state fiscal year unless the surcharge is suspended under
12 subsection (3) of this section or adjusted for that fiscal year under
13 this subsection.

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

17 (f) The department (~~shall~~) must provide timely notice to affected
18 taxpayers of the suspension of the surcharge or an adjustment of the
19 surcharge.

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

24 **Sec. 511.** RCW 82.04.298 and 2008 c 49 s 1 are each amended to read
25 as follows:

26 (1) The amount of tax with respect to a qualified grocery
27 distribution cooperative's sales of groceries or related goods for
28 resale, excluding items subject to tax under (~~RCW 82.04.260(4)~~)
29 section 502 of this act, to customer-owners of the grocery distribution
30 cooperative is equal to the gross proceeds of sales of the grocery
31 distribution cooperative multiplied by the rate of one and one-half
32 percent.

33 (2) A qualified grocery distribution cooperative is allowed a
34 deduction from the gross proceeds of sales of groceries or related
35 goods for resale, excluding items subject to tax under (~~RCW~~
36 ~~82.04.260(4)~~) section 502 of this act, to customer-owners of the
37 grocery distribution cooperative that is equal to the portion of the

1 gross proceeds of sales for resale that represents the actual cost of
2 the merchandise sold by the grocery distribution cooperative to
3 customer-owners.

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

6 (a) "Grocery distribution cooperative" means an entity that sells
7 groceries and related items to customer-owners of the grocery
8 distribution cooperative and has customer-owners, in the aggregate, who
9 own a majority of the outstanding ownership interests of the grocery
10 distribution cooperative or of the entity controlling the grocery
11 distribution cooperative. "Grocery distribution cooperative" includes
12 an entity that controls a grocery distribution cooperative.

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

14 (i) A grocery distribution cooperative that has been determined by
15 a court of record of the state of Washington to be not engaged in
16 wholesaling or making sales at wholesale, within the meaning of RCW
17 82.04.270 or any similar provision of a municipal ordinance that
18 imposes a tax on gross receipts, gross proceeds of sales, or gross
19 income, with respect to purchases made by customer-owners, and
20 subsequently changes its form of doing business to make sales at
21 wholesale of groceries or related items to its customer-owners; or

22 (ii) A grocery distribution cooperative that has acquired
23 substantially all of the assets of a grocery distribution cooperative
24 described in (b)(i) of this subsection.

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

28 (d) "Controlling" means holding fifty percent or more of the voting
29 interests of an entity and having at least equal power to direct or
30 cause the direction of the management and policies of the entity,
31 whether through the ownership of voting securities, by contract, or
32 otherwise.

33 **Sec. 512.** RCW 82.04.334 and 2007 c 48 s 3 are each amended to read
34 as follows:

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

1 **Sec. 513.** RCW 82.04.440 and 2006 c 300 s 8 and 2006 c 84 s 6 are
2 each reenacted and amended to read as follows:

3 (1) Every person engaged in activities that are subject to tax
4 under two or more provisions of RCW 82.04.230 through 82.04.298,
5 inclusive, (~~shall be~~) is taxable under each provision applicable to
6 those activities.

7 (2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270,
8 82.04.294(2), or 82.04.260 (1)(~~b~~), (c), (~~(+4)~~) or (d), (10), or (11),
9 or (~~(+12)~~) section 502(2) of this act with respect to selling products
10 in this state, including those persons who are also taxable under RCW
11 82.04.261, (~~shall be~~) are allowed a credit against those taxes for
12 any (a) manufacturing taxes paid with respect to the manufacturing of
13 products so sold in this state, and/or (b) extracting taxes paid with
14 respect to the extracting of products so sold in this state or
15 ingredients of products so sold in this state. Extracting taxes taken
16 as credit under subsection (3) of this section may also be taken under
17 this subsection, if otherwise allowable under this subsection. The
18 amount of the credit (~~shall~~) may not exceed the tax liability arising
19 under this chapter with respect to the sale of those products.

20 (3) Persons taxable as manufacturers under RCW 82.04.240 or
21 82.04.260 (1)(~~b~~) or (~~(+12)~~) (11), including those persons who are also
22 taxable under RCW 82.04.261, (~~shall be~~) are allowed a credit against
23 those taxes for any extracting taxes paid with respect to extracting
24 the ingredients of the products so manufactured in this state. The
25 amount of the credit (~~shall~~) may not exceed the tax liability arising
26 under this chapter with respect to the manufacturing of those products.

27 (4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1),
28 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (~~(+4)~~) (10), or
29 (11), or (~~(+12)~~) section 502(1) of this act, including those persons
30 who are also taxable under RCW 82.04.261, with respect to extracting or
31 manufacturing products in this state (~~shall be~~) are allowed a credit
32 against those taxes for any (i) gross receipts taxes paid to another
33 state with respect to the sales of the products so extracted or
34 manufactured in this state, (ii) manufacturing taxes paid with respect
35 to the manufacturing of products using ingredients so extracted in this
36 state, or (iii) manufacturing taxes paid with respect to manufacturing
37 activities completed in another state for products so manufactured in

1 this state. The amount of the credit (~~shall~~) may not exceed the tax
2 liability arising under this chapter with respect to the extraction or
3 manufacturing of those products.

4 (5) For the purpose of this section:

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

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

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

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

16 (c) "Manufacturing tax" means a gross receipts tax imposed on the
17 act or privilege of engaging in business as a manufacturer, and
18 includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404,
19 82.04.2909(1), 82.04.260 (1), (2), (~~(4)~~) (10), and (11), (~~and~~
20 ~~(12)~~) section 502(1) of this act, and 82.04.294(1); (ii) the tax
21 imposed under RCW 82.04.261 on persons who are engaged in business as
22 a manufacturer; and (iii) similar gross receipts taxes paid to other
23 states.

24 (d) "Extracting tax" means a gross receipts tax imposed on the act
25 or privilege of engaging in business as an extractor, and includes (i)
26 the tax imposed on extractors in RCW 82.04.230 and 82.04.260(~~(12)~~)
27 (11); (ii) the tax imposed under RCW 82.04.261 on persons who are
28 engaged in business as an extractor; and (iii) similar gross receipts
29 taxes paid to other states.

30 (e) "Business", "manufacturer", "extractor", and other terms used
31 in this section have the meanings given in RCW 82.04.020 through
32 82.04.212, notwithstanding the use of those terms in the context of
33 describing taxes imposed by other states.

34 **Sec. 514.** RCW 82.04.4463 and 2008 c 81 s 8 are each amended to
35 read as follows:

36 (1) In computing the tax imposed under this chapter, a credit is

1 allowed for property taxes and leasehold excise taxes paid during the
2 calendar year.

3 (2) The credit is equal to:

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

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

12 (C) Property taxes or leasehold excise taxes paid on, or with
13 respect to, buildings constructed after June 30, 2008, the land upon
14 which the buildings are located, or both, and used exclusively for
15 aerospace product development or in providing aerospace services, by
16 persons not within the scope of (a)(i)(A) and (B) of this subsection

17 (2) and are: (I) Engaged in manufacturing tooling specifically
18 designed for use in manufacturing commercial airplanes or their
19 components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

20 (ii) Property taxes attributable to an increase in assessed value
21 due to the renovation or expansion, after: (A) December 1, 2003, of a
22 building used exclusively in manufacturing commercial airplanes or
23 components of such airplanes; and (B) June 30, 2008, of buildings used
24 exclusively for aerospace product development or in providing aerospace
25 services, by persons not within the scope of (a)(ii)(A) of this
26 subsection (2) and are: (I) Engaged in manufacturing tooling
27 specifically designed for use in manufacturing commercial airplanes or
28 their components; or (II) taxable under RCW 82.04.290(3) or
29 82.04.250(3); and

30 (b) An amount equal to:

31 (i)(A) Property taxes paid, by persons taxable under RCW
32 82.04.260(~~(+11)~~) (10)(a), on machinery and equipment exempt under RCW
33 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

34 (B) Property taxes paid, by persons taxable under RCW
35 82.04.260(~~(+11)~~) (10)(b), on machinery and equipment exempt under RCW
36 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

37 (C) Property taxes paid, by persons taxable under RCW

1 (~~(82.04.0250(3))~~ [~~82.04.250(3)~~]) 82.04.250(3) or 82.04.290(3), on
2 computer hardware, computer peripherals, and software exempt under RCW
3 82.08.975 or 82.12.975 and acquired after June 30, 2008.

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

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

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

16 (~~(+III)~~) (C) For purposes of both the numerator and denominator of
17 the fraction, the total taxable amount refers to the total taxable
18 amount required to be reported on the person's returns for the calendar
19 year before the calendar year in which the credit under this section is
20 earned. The department may provide for an alternative method for
21 calculating the numerator in cases where the tax rate provided in RCW
22 82.04.260(~~(+II)~~) (10) for manufacturing was not in effect during the
23 full calendar year before the calendar year in which the credit under
24 this section is earned.

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

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

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

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

36 (b) "Aerospace services" has the same meaning given in RCW
37 82.08.975.

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

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

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

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

11 **Sec. 515.** RCW 82.04.4463 and 2010 c 114 (SHB 3066) s 116 are each
12 amended to read as follows:

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

16 (2) The credit is equal to:

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

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

25 (C) Property taxes or leasehold excise taxes paid on, or with
26 respect to, buildings constructed after June 30, 2008, the land upon
27 which the buildings are located, or both, and used exclusively for
28 aerospace product development, manufacturing tooling specifically
29 designed for use in manufacturing commercial airplanes or their
30 components, or in providing aerospace services, by persons not within
31 the scope of (a)(i)(A) and (B) of this subsection (2) and are taxable
32 under RCW 82.04.290(3), 82.04.260(~~(+11)~~) (10)(b), or 82.04.250(3); or

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

1 specifically designed for use in manufacturing commercial airplanes or
2 their components, or in providing aerospace services, by persons not
3 within the scope of (a)(ii)(A) of this subsection (2) and are taxable
4 under RCW 82.04.290(3), 82.04.260(~~((+11))~~) (10)(b), or 82.04.250(3); and

5 (b) An amount equal to:

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

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

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

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

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

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

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

37 (D) No credit is available under (b)(i)(A) or (B) of this

1 subsection (2) if either the numerator or the denominator of the
2 fraction is zero. If the fraction is greater than or equal to nine-
3 tenths, then the fraction is rounded to one.

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

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

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

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

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

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

19 (5) In addition to all other requirements under this title, a
20 person claiming the credit under this section must file a complete
21 annual report with the department under RCW 82.32.--- (section 103,
22 chapter 114 (SHB 3066), Laws of 2010).

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

24 **Sec. 516.** RCW 82.08.806 and 2009 c 461 s 5 are each amended to
25 read as follows:

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

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

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

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

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

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

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

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

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

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

27 **Sec. 517.** RCW 82.32.550 and 2008 c 81 s 12 are each amended to
28 read as follows:

29 ~~(1)((a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the~~
30 ~~first day of the month in which the governor and a manufacturer of~~
31 ~~commercial airplanes sign a memorandum of agreement regarding an~~
32 ~~affirmative final decision to site a significant commercial airplane~~
33 ~~final assembly facility in Washington state. The department shall~~
34 ~~provide notice of the effective date of chapter 1, Laws of 2003 2nd sp.~~
35 ~~sess. to affected taxpayers, the legislature, and others as deemed~~
36 ~~appropriate by the department.~~

1 ~~(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the~~
2 ~~siting of a significant commercial airplane final assembly facility in~~
3 ~~the state of Washington. If a memorandum of agreement under subsection~~
4 ~~(1) of this section is not signed by June 30, 2005, chapter 1, Laws of~~
5 ~~2003 2nd sp. sess. is null and void.~~

6 ~~(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1,~~
7 ~~2007.~~

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

12 ~~(2) The definitions in this subsection apply throughout this~~
13 ~~section.~~

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

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

21 ~~((c) "Final assembly of a superefficient airplane" means the~~
22 ~~activity of assembling an airplane from components parts necessary for~~
23 ~~its mechanical operation such that the finished commercial airplane is~~
24 ~~ready to deliver to the ultimate consumer.~~

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

28 ~~(e) "Siting" means a final decision by a manufacturer to locate a~~
29 ~~significant commercial airplane final assembly facility in Washington~~
30 ~~state.~~

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

36 **Sec. 518.** RCW 82.45.195 and 2007 c 48 s 7 are each amended to read
37 as follows:

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

4 **Sec. 519.** RCW 35.102.150 and 2009 c 461 s 4 are each amended to
5 read as follows:

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

14 **Sec. 520.** RCW 48.14.080 and 2009 c 535 s 1102 are each amended to
15 read as follows:

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

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

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

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

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

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

32 **PART VI**

33 **Suspending the Sales and Use Tax Exemption for Livestock Nutrient**
34 **Equipment and Facilities**

1 **Sec. 601.** RCW 82.08.890 and 2009 c 469 s 601 are each amended to
2 read as follows:

3 (1) The tax levied by RCW 82.08.020 does not apply to sales to
4 eligible persons of:

5 (a) Qualifying livestock nutrient management equipment;

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

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

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

23 (2) The exemption provided in subsection (1) of this section
24 applies to sales made after the livestock nutrient management plan is:

25 (a) Certified under chapter 90.64 RCW; (b) approved as part of the
26 permit issued under chapter 90.48 RCW; or (c) approved as required
27 under subsection (4)(c)(iii) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (5) The exemption under this section does not apply to sales made
17 from the effective date of this section through June 30, 2013.

18 **Sec. 602.** RCW 82.12.890 and 2009 c 469 s 602 are each amended to
19 read as follows:

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

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

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

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

36 (2)(a) To be eligible, the equipment and facilities must be used

1 exclusively for activities necessary to maintain a livestock nutrient
2 management plan.

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

8 (3) The exemption certificate and recordkeeping requirements of RCW
9 82.08.890 apply to this section. The definitions in RCW 82.08.890
10 apply to this section.

11 (4) The exemption under this section does not apply to the use of
12 tangible personal property and services if first use of the property or
13 services in this state occurs from the effective date of this section
14 through June 30, 2013.

15 **PART VII**
16 **Ending the Preferential Business and Occupation Tax Treatment Received**
17 **by Directors of Corporations**

18 NEW SECTION. **Sec. 701.** (1) In adopting the state's business and
19 occupation tax, the legislature intended to tax virtually all business
20 activities carried on within the state. See *Simpson Inv. Co. v. Dep't*
21 *of Revenue*, 141 Wn.2d 139, 149 (2000). The legislature recognizes that
22 the business and occupation tax applies to all activities engaged in
23 with the object of gain, benefit, or advantage to the taxpayer or to
24 another person or class, directly or indirectly, unless a specific
25 exemption applies.

26 (2) One of the major business and occupation tax exemptions is
27 provided in RCW 82.04.360 for income earned as an employee or servant
28 as distinguished from income earned as an independent contractor. The
29 legislature's intent in providing this exemption was to exempt employee
30 wages from the business and occupation tax but not to exempt income
31 earned as an independent contractor.

32 (3) The legislature finds that corporate directors are not
33 employees or servants of the corporation whose board they serve on and
34 therefore are not entitled to a business and occupation tax exemption
35 under RCW 82.04.360. The legislature further finds that there are no

1 business and occupation tax exemptions for compensation received for
2 serving as a member of a corporation's board of directors.

3 (4) The legislature also finds that there is a widespread
4 misunderstanding among corporate directors that the business and
5 occupation tax does not apply to the compensation they receive for
6 serving as a director of a corporation. It is the legislature's
7 expectation that the department of revenue will take appropriate
8 measures to ensure that corporate directors understand and comply with
9 their business and occupation tax obligations with respect to their
10 director compensation. However, because of the widespread
11 misunderstanding by corporate directors of their liability for business
12 and occupation tax on director compensation, the legislature finds that
13 it is appropriate in this unique situation to provide limited relief
14 against the retroactive assessment of business and occupation taxes on
15 corporate director compensation.

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

20 **Sec. 702.** RCW 82.04.360 and 2010 c 106 (E2SHB 1597) s 207 are each
21 amended to read as follows:

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

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

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

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

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

4 **PART VIII**

5 **Tax Debts**

6 **Sec. 801.** RCW 82.32.145 and 1995 c 318 s 2 are each amended to
7 read as follows:

8 ~~(1) ((Upon termination, dissolution, or abandonment of a corporate~~
9 ~~or limited liability company business, any officer, member, manager, or~~
10 ~~other person having control or supervision of retail sales tax funds~~
11 ~~collected and held in trust under RCW 82.08.050, or who is charged with~~
12 ~~the responsibility for the filing of returns or the payment of retail~~
13 ~~sales tax funds collected and held in trust under RCW 82.08.050, shall~~
14 ~~be personally liable for any unpaid taxes and interest and penalties on~~
15 ~~those taxes, if such officer or other person wilfully fails to pay or~~
16 ~~to cause to be paid any taxes due from the corporation pursuant to~~
17 ~~chapter 82.08 RCW. For the purposes of this section, any retail sales~~
18 ~~taxes that have been paid but not collected shall be deductible from~~
19 ~~the retail sales taxes collected but not paid.~~

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

23 ~~(2) The officer, member or manager, or other person shall be liable~~
24 ~~only for taxes collected which)) Whenever the department has issued a~~
25 ~~warrant under RCW 82.32.210 for the collection of unpaid retail sales~~
26 ~~tax funds collected and held in trust under RCW 82.08.050 from a~~
27 ~~limited liability business entity and that business entity has been~~
28 ~~terminated, dissolved, or abandoned, or is insolvent, the department~~
29 ~~may pursue collection of the entity's unpaid sales taxes, including~~
30 ~~penalties and interest on those taxes, against any or all of the~~
31 ~~responsible individuals. For purposes of this subsection, "insolvent"~~
32 ~~means the condition that results when the sum of the entity's debts~~
33 ~~exceeds the fair market value of its assets. The department may~~
34 ~~presume that an entity is insolvent if the entity refuses to disclose~~
35 ~~to the department the nature of its assets and liabilities.~~

1 (2) Personal liability under this section may be imposed for state
2 and local sales taxes.

3 (3)(a) For a responsible individual who is the current or a former
4 chief executive or chief financial officer, liability under this
5 section applies regardless of fault or whether the individual was or
6 should have been aware of the unpaid sales tax liability of the limited
7 liability business entity.

8 (b) For any other responsible individual, liability under this
9 section applies only if he or she willfully fails to pay or to cause to
10 be paid to the department the sales taxes due from the limited
11 liability business entity.

12 (4)(a) Except as provided in this subsection (4)(a), a responsible
13 individual who is the current or a former chief executive or chief
14 financial officer is liable under this section only for sales tax
15 liability accrued during the period that he or she was the chief
16 executive or chief financial officer. However, if the responsible
17 individual had the responsibility or duty to remit payment of the
18 limited liability business entity's sales taxes to the department
19 during any period of time that the person was not the chief executive
20 or chief financial officer, that individual is also liable for sales
21 tax liability that became due during the period that he or she had the
22 duty to remit payment of the limited liability business entity's taxes
23 to the department but was not the chief executive or chief financial
24 officer.

25 (b) All other responsible individuals are liable under this section
26 only for sales tax liability that became due during the period he or
27 she had the (~~control, supervision,~~) responsibility(~~(7)~~) or duty to
28 (~~act for the corporation described in subsection (1) of this section,~~
29 ~~plus interest and penalties on those taxes.~~

30 (~~3~~) ~~)~~ remit payment of the limited liability business entity's
31 taxes to the department.

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

37 (~~(4)~~) (6) Any person having been issued a notice of assessment

1 under this section is entitled to the appeal procedures under RCW
2 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

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

6 ~~(6))~~ (7) This section does not relieve the ~~((corporation or))~~
7 limited liability ~~((company))~~ business entity of ~~((other tax
8 liabilities))~~ its sales tax liability or otherwise impair other tax
9 collection remedies afforded by law.

10 ~~((7))~~ (8) Collection authority and procedures prescribed in this
11 chapter apply to collections under this section.

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

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

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

24 (c) "Limited liability business entity" means a type of business
25 entity that generally shields its owners from personal liability for
26 the debts, obligations, and liabilities of the entity, or a business
27 entity that is managed or owned in whole or in part by an entity that
28 generally shields its owners from personal liability for the debts,
29 obligations, and liabilities of the entity. Limited liability business
30 entities include corporations, limited liability companies, limited
31 liability partnerships, trusts, general partnerships and joint ventures
32 in which one or more of the partners or parties are also limited
33 liability business entities, and limited partnerships in which one or
34 more of the general partners are also limited liability business
35 entities.

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

37 (e) "Member" has the same meaning as in RCW 25.15.005, except that

1 the term only includes members of member-managed limited liability
2 companies.

3 (f) "Officer" means any officer or assistant officer of a
4 corporation, including the president, vice-president, secretary, and
5 treasurer.

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

9 (ii) "Responsible individual" also includes any current or former
10 employee or other individual, but only if the individual had the
11 responsibility or duty to remit payment of the limited liability
12 business entity's unpaid sales tax liability reflected in a tax warrant
13 issued by the department.

14 (iii) Whenever any taxpayer has one or more limited liability
15 business entities as a member, manager, or partner, "responsible
16 individual" also includes any current and former officers, members, or
17 managers of the limited liability business entity or entities or of any
18 other limited liability business entity involved directly in the
19 management of the taxpayer. For purposes of this subsection
20 (9)(g)(iii), "taxpayer" means a limited liability business entity with
21 an unpaid tax warrant issued against it by the department.

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

25 **PART IX**

26 **Repealing the Sales and Use Tax Exemptions**
27 **for Bottled Water and Candy**

28 **Sec. 901.** RCW 82.08.0293 and 2009 c 483 s 2 are each amended to
29 read as follows:

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

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

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

6 (2) Until July 1, 2013, the exemption of "food and food
7 ingredients" provided for in subsection (1) of this section (~~shall~~)
8 does not apply to prepared food, soft drinks, bottled water, candy, or
9 dietary supplements. Beginning July 1, 2013, the exemption of "food
10 and food ingredients" provided for in subsection (1) of this section
11 does not apply to prepared food, soft drinks, candy, or dietary
12 supplements.

13 (a) "Prepared food" means:

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

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

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

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

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

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

31 (i) Food sold by a seller whose proper primary North American
32 industry classification system (NAICS) classification is manufacturing
33 in sector 311, except subsector 3118 (bakeries), as provided in the
34 "North American industry classification system--United States, 2002";

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

37 (iii) Bakery items. The term "bakery items" includes bread, rolls,

1 buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes,
2 tortes, pies, tarts, muffins, bars, cookies, or tortillas.

3 (c) "Soft drinks" means nonalcoholic beverages that contain natural
4 or artificial sweeteners. Soft drinks do not include beverages that
5 contain: Milk or milk products; soy, rice, or similar milk
6 substitutes; or greater than fifty percent of vegetable or fruit juice
7 by volume.

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

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

11 (A) A vitamin;

12 (B) A mineral;

13 (C) An herb or other botanical;

14 (D) An amino acid;

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

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

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

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

27 (e) "Candy" means a preparation of sugar, honey, or other natural
28 or artificial sweeteners in combination with chocolate, fruits, nuts,
29 or other ingredients or flavorings in the form of bars, drops, or
30 pieces. "Candy" does not include any preparation containing flour and
31 does not require refrigeration.

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

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

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

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

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

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

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

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

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

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

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

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

4 **Sec. 902.** RCW 82.08.0293 and 2010 c 106 (E2SHB 1597) s 216 are
5 each amended to read as follows:

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

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

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

17 (2) Until July 1, 2013, the exemption of "food and food
18 ingredients" provided for in subsection (1) of this section does not
19 apply to prepared food, soft drinks, bottled water, candy, or dietary
20 supplements. Beginning July 1, 2013, the exemption of "food and food
21 ingredients" provided for in subsection (1) of this section does not
22 apply to prepared food, soft drinks, candy, or dietary supplements.

23 For purposes of this subsection, the following definitions apply:

24 (a) "Dietary supplement" means any product, other than tobacco,
25 intended to supplement the diet that:

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

27 (A) A vitamin;

28 (B) A mineral;

29 (C) An herb or other botanical;

30 (D) An amino acid;

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

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

35 (ii) Is intended for ingestion in tablet, capsule, powder, softgel,
36 gelcap, or liquid form, or if not intended for ingestion in such form,

1 is not represented as conventional food and is not represented for use
2 as a sole item of a meal or of the diet; and

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

7 (b)(i) "Prepared food" means:

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

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

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

15 (I) Food that is only cut, repackaged, or pasteurized by the
16 seller; or

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

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

25 (A) Food sold by a seller whose proper primary North American
26 industry classification system (NAICS) classification is manufacturing
27 in sector 311, except subsector 3118 (bakeries), as provided in the
28 "North American industry classification system--United States, 2002";

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

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

34 (c) "Soft drinks" means nonalcoholic beverages that contain natural
35 or artificial sweeteners. Soft drinks do not include beverages that
36 contain: Milk or milk products; soy, rice, or similar milk
37 substitutes; or greater than fifty percent of vegetable or fruit juice
38 by volume.

1 (d) "Candy" means a preparation of sugar, honey, or other natural
2 or artificial sweeteners in combination with chocolate, fruits, nuts,
3 or other ingredients or flavorings in the form of bars, drops, or
4 pieces. "Candy" does not include any preparation containing flour and
5 does not require refrigeration.

6 (e) "Bottled water" means water that is placed in a sealed
7 container or package for human consumption. Bottled water is calorie
8 free and does not contain sweeteners or other additives except that it
9 may contain: (i) Antimicrobial agents; (ii) fluoride; (iii)
10 carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen;
11 (vi) preservatives; and (vii) only those flavors, extracts, or essences
12 derived from a spice or fruit. "Bottled water" includes water that is
13 delivered to the buyer in a reusable container that is not sold with
14 the water.

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

19 (a) Under a state administered nutrition program for the aged as
20 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
21 74.38.040(6);

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

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

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

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

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

4 (4)(a) Subsection (1) of this section notwithstanding, the retail
5 sale of food and food ingredients is subject to sales tax under RCW
6 82.08.020 if the food and food ingredients are sold through a vending
7 machine. Except as provided in (b) of this subsection, the selling
8 price of food and food ingredients sold through a vending machine for
9 purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

10 (b) For soft drinks and hot prepared food and food ingredients,
11 other than food and food ingredients which are heated after they have
12 been dispensed from the vending machine, the selling price is the total
13 gross receipts of such sales divided by the sum of one plus the sales
14 tax rate expressed as a decimal.

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

18 **Sec. 903.** RCW 82.12.0293 and 2009 c 483 s 4 are each amended to
19 read as follows:

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

23 (2) Until July 1, 2013, the exemption of "food and food
24 ingredients" provided for in subsection (1) of this section (~~shall~~)
25 does not apply to prepared food, soft drinks, bottled water, candy, or
26 dietary supplements. Beginning July 1, 2013, the exemption of "food
27 and food ingredients" provided for in subsection (1) of this section
28 does not apply to prepared food, soft drinks, candy, or dietary
29 supplements. "Prepared food," "soft drinks," (~~and~~) "dietary
30 supplements," "candy," and "bottled water" have the same meanings as in
31 RCW 82.08.0293.

32 (3) Notwithstanding anything in this section to the contrary, the
33 exemption of "food and food ingredients" provided in this section
34 (~~shall~~) apply to food and food ingredients which are furnished,
35 prepared, or served as meals:

36 (a) Under a state administered nutrition program for the aged as

1 provided for in the older Americans act (P.L. 95-478 Title III) and RCW
2 74.38.040(6);

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

6 (c) That are provided to residents, sixty-two years of age or
7 older, of a qualified low-income senior housing facility by the lessor
8 or operator of the facility. The sale of a meal that is billed to both
9 spouses of a marital community or both domestic partners of a domestic
10 partnership meets the age requirement in this subsection (3)(c) if at
11 least one of the spouses or domestic partners is at least sixty-two
12 years of age. For purposes of this subsection, "qualified low-income
13 senior housing facility" has the same meaning as in RCW 82.08.0293.

14 NEW SECTION. **Sec. 904.** A new section is added to chapter 82.08
15 RCW to read as follows:

16 (1) Subject to the conditions in this section, the tax levied by
17 RCW 82.08.020 does not apply to sales of bottled water for human use
18 dispensed or to be dispensed to patients, pursuant to a prescription
19 for use in the cure, mitigation, treatment, or prevention of disease or
20 other medical condition. For purposes of this section, "prescription"
21 means an order, formula, or recipe issued in any form of oral, written,
22 electronic, or other means of transmission by a duly licensed
23 practitioner authorized by the laws of this state to prescribe.

24 (2) Except for sales of bottled water delivered to the buyer in a
25 reusable container that is not sold with the water, sellers must
26 collect tax on sales subject to this exemption. Any buyer that has
27 paid at least twenty-five dollars in state and local sales taxes on
28 purchases of bottled water subject to this exemption may apply for a
29 refund of the taxes directly from the department in a form and manner
30 prescribed by the department. The department must deny any refund
31 application if the amount of the refund requested is less than twenty-
32 five dollars. No refund may be made for taxes paid more than four
33 years after the end of the calendar year in which the tax was paid to
34 the seller.

35 (3) The provisions of RCW 82.32.060 apply to refunds authorized
36 under this section.

1 (4) With respect to sales of bottled water delivered to the buyer
2 in a reusable container that is not sold with the water, buyers
3 claiming the exemption provided in this section must provide the seller
4 with an exemption certificate in a form and manner prescribed by the
5 department. The seller must retain a copy of the certificate for the
6 seller's files.

7 NEW SECTION. **Sec. 905.** A new section is added to chapter 82.12
8 RCW to read as follows:

9 The provisions of this chapter do not apply in respect to the use
10 of bottled water for human use dispensed or to be dispensed to
11 patients, pursuant to a prescription for use in the cure, mitigation,
12 treatment, or prevention of disease or medical condition.
13 "Prescription" has the same meaning as in section 904 of this act.

14 NEW SECTION. **Sec. 906.** A new section is added to chapter 82.08
15 RCW to read as follows:

16 (1) Subject to the conditions in this section, the tax levied by
17 RCW 82.08.020 does not apply to sales of bottled water for human use to
18 persons who do not otherwise have a readily available source of potable
19 water.

20 (2) Except for sales of bottled water delivered to the buyer in a
21 reusable container that is not sold with the water, sellers must
22 collect tax on sales subject to this exemption. Any buyer that has
23 paid at least twenty-five dollars in state and local sales taxes on
24 purchases of bottled water subject to this exemption may apply for a
25 refund of the taxes directly from the department in a form and manner
26 prescribed by the department. The department must deny any refund
27 application if the amount of the refund requested is less than twenty-
28 five dollars. No refund may be made for taxes paid more than four
29 years after the end of the calendar year in which the tax was paid to
30 the seller.

31 (3) The provisions of RCW 82.32.060 apply to refunds authorized
32 under this section.

33 (4)(a) With respect to sales of bottled water delivered to the
34 buyer in a reusable container that is not sold with the water, buyers
35 claiming the exemption provided in this section must provide the seller

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

4 (b) The department may waive the requirement for an exemption
5 certificate in the event of disaster or similar circumstance.

6 NEW SECTION. **Sec. 907.** A new section is added to chapter 82.12
7 RCW to read as follows:

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

11 NEW SECTION. **Sec. 908.** A new section is added to chapter 82.04
12 RCW to read as follows:

13 (1)(a) Subject to the requirements and limits in this section,
14 candy manufacturers are entitled to a credit against the tax due under
15 this chapter. The credit equals one thousand dollars for:

16 (i) Each full-time employment position that has been maintained in
17 this state on a full-time basis for a continuous period of at least
18 twelve consecutive months; or

19 (ii) Each full-time equivalent seasonal employee hired by a
20 seasonal employer.

21 (b) Once a full-time employment position has been filled, the
22 position does not cease to be maintained for a continuous period solely
23 due to periods in which the position goes vacant, as long as:

24 (i) The cumulative period of any vacancies in that position is not
25 more than one hundred twenty days in the twelve consecutive month
26 period for which the position must be filled to earn a credit under
27 this section; and

28 (ii) During any vacancy, the employer is training or actively
29 recruiting a replacement permanent, full-time employee for the
30 position.

31 (c) For full-time employment positions initially filled before July
32 1, 2010:

33 (i) The twelve consecutive month period for which the position must
34 be filled to earn a credit under this section begins on the later of
35 August 1, 2009, or the date that the employment position was initially
36 filled; and

1 (ii) A second credit may be earned if the employment position is
2 maintained on a full-time basis for an additional twelve consecutive
3 month period.

4 (2)(a) The credit may only be claimed on a tax return filed
5 electronically with the department using the department's online tax
6 filing service, unless the department grants a waiver for good cause
7 shown. For purposes of this subsection, "good cause" has the same
8 meaning as in RCW 82.32.080(8)(a) (i), (ii), (iii), and (vi) and (b).

9 (b) Credit may be claimed only on tax returns originally due after
10 July 31, 2010.

11 (c) The department must disallow any credit claimed on tax returns
12 filed with the department after July 31, 2012.

13 (3)(a) Credits claimed may not exceed the tax otherwise due under
14 this chapter on the manufacturing and retail or wholesale sale of candy
15 manufactured by the taxpayer.

16 (b) No refunds may be granted for credits under this section.

17 (c) The credit provided in this section is in addition to any other
18 credit that may be available to the candy manufacturer with respect to
19 the same employment positions.

20 (4) No application is necessary for the credit. Candy
21 manufacturers claiming the credit must keep records necessary for the
22 department to verify eligibility under this section.

23 (5) A candy manufacturer claiming credit under this section must
24 report to the department as provided in RCW 82.32.--- (section 103,
25 chapter 114 (SHB 3066), Laws of 2010).

26 (6) The employment security department must provide to the
27 department such information needed by the department to verify
28 eligibility under this section.

29 (7) Pursuant to chapter 43.136 RCW, the citizen commission for
30 performance measurement of tax preferences must schedule the credit
31 under this section for a tax preference review by the joint legislative
32 audit and review committee in 2011.

33 (8) For purposes of this section, the following definitions apply:

34 (a) "Candy" has the same meaning as in RCW 82.08.0293.

35 (b) "Candy manufacturer" means a person that manufactures candy.
36 For purposes of this subsection "manufactures" has the same meaning as
37 "to manufacture" in RCW 82.04.120.

1 (c) "Full-time" means a normal work week of at least thirty-five
2 hours.

3 (d) "Seasonal employee" means an employee of a seasonal employer
4 who works on a seasonal basis. "Seasonal basis" means a continuous
5 employment period of less than twelve consecutive months.

6 (e) "Seasonal employer" means a person who regularly hires more
7 than ten percent of its employees to work on a seasonal basis.

8 NEW SECTION. **Sec. 909.** If any provision of section 908 of this
9 act or its application to any person or circumstance is held
10 unconstitutional: (1) Section 908 of this act is considered invalid in
11 its entirety; and (2) section 908 of this act and the application of
12 any provision of that section to any person or circumstance is
13 considered null and void and of no effect.

14 NEW SECTION. **Sec. 910.** A new section is added to chapter 82.32
15 RCW to read as follows:

16 (1) The department must compile a list of products meeting the
17 definition of candy in RCW 82.08.0293 and products that are similar to
18 candy but do not meet that definition. The list must identify each
19 item as either subject to sales or use tax or not subject to sales or
20 use tax. The list will be made in a form and manner prescribed by the
21 department and must be made available on the department's internet web
22 site. The list must also provide information about how to request a
23 binding ruling from the department on the taxability of products not on
24 the list.

25 (2) In compiling the list described in subsection (1) of this
26 section, the department may:

27 (a) Evaluate the experiences of other member states of the
28 streamlined sales and use tax agreement that impose retail sales tax on
29 candy;

30 (b) Accept technical assistance from persons that sell, market, or
31 distribute candy; and

32 (c) Consider any other resource the department finds useful in
33 compiling the list.

34 (3) The creation of a list under subsection (1) of this section and
35 any modifications to the list are not subject to the rule-making
36 provisions of chapter 34.05 RCW.

1 (4) For products that are not identified on the list created by the
2 department under subsection (1) of this section, taxpayers may request
3 a binding written ruling from the department on the taxability of the
4 product.

5 **PART X**

6 **PUD Privilege Tax Clarification**

7 **Sec. 1001.** RCW 54.28.011 and 1957 c 278 s 12 are each amended to
8 read as follows:

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

14 **PART XI**

15 **Temporarily Increasing the Business and Occupation Tax on Service**
16 **Businesses while Increasing the Small Business Credit for the Same**
17 **Businesses**

18 NEW SECTION. **Sec. 1101.** A new section is added to chapter 82.04
19 RCW to read as follows:

20 (1) Beginning May 1, 2010, through June 30, 2013, an additional
21 rate of tax of 0.30 percent is added to the rate provided for in RCW
22 82.04.255, 82.04.285, and 82.04.290(2)(a).

23 (2)(a) The additional rate in subsection (1) of this section does
24 not apply to persons engaging within this state in business as a
25 hospital. "Hospital" has the meaning provided in chapter 70.41 RCW but
26 also includes any hospital that comes within the scope of chapter 71.12
27 RCW if the hospital is also licensed under chapter 70.41 RCW.

28 (b) The additional rate in subsection (1) of this section does not
29 apply to amounts received from performing scientific research and
30 development services including but not limited to research and
31 development in the physical, engineering, and life sciences (such as
32 agriculture, bacteriological, biotechnology, chemical, life sciences,
33 and physical science research and development laboratories or
34 services).

1 **Sec. 1102.** RCW 82.04.4451 and 1997 c 238 s 2 are each amended to
2 read as follows:

3 (1) In computing the tax imposed under this chapter, a credit is
4 allowed against the amount of tax otherwise due under this chapter, as
5 provided in this section. ~~((The maximum credit for a taxpayer))~~ Except
6 for taxpayers that report at least fifty percent of their taxable
7 amount under RCW 82.04.255, 82.04.290(2)(a), and 82.04.285, the maximum
8 credit for a taxpayer for a reporting period is thirty-five dollars
9 multiplied by the number of months in the reporting period, as
10 determined under RCW 82.32.045. For a taxpayer that reports at least
11 fifty percent of its taxable amount under RCW 82.04.255,
12 82.04.290(2)(a), and 82.04.285, the maximum credit for a reporting
13 period is seventy dollars multiplied by the number of months in the
14 reporting period, as determined under RCW 82.32.045.

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

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

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

30 **Sec. 1103.** RCW 82.32.045 and 2006 c 256 s 1 are each amended to
31 read as follows:

32 (1) Except as otherwise provided in this chapter, payments of the
33 taxes imposed under chapters 82.04, 82.08, 82.12, 82.14, and 82.16 RCW,
34 along with reports and returns on forms prescribed by the department,
35 are due monthly within twenty-five days after the end of the month in
36 which the taxable activities occur.

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

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

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

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

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

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

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

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

27 PART XII

28 Property Management Salaries

29 **Sec. 1201.** RCW 82.04.394 and 1998 c 338 s 2 are each amended to
30 read as follows:

31 (1) This chapter does not apply to:

32 (a) Amounts received by a nonprofit property management company
33 from the owner of a property for gross wages and benefits paid directly
34 to or on behalf of on-site personnel from property management trust
35 accounts that are required to be maintained under RCW ((18.85.310))
36 18.85.285; or

1 (b) Amounts received by a property management company from a
2 housing authority for gross wages and benefits paid directly to or on
3 behalf of on-site personnel from property management trust accounts
4 that are required to be maintained under RCW 18.85.285.

5 (2) (~~As used in~~) The definitions in this subsection apply to this
6 section((τ)).

7 (a) "On-site personnel" means a person who meets all of the
8 following conditions: (~~(a)~~) (i) The person works primarily at the
9 owner's property; (~~(b)~~) (ii) the person's duties include leasing
10 property units, maintaining the property, collecting rents, or similar
11 activities; and (~~(c)~~) (iii) under a written property management
12 agreement: (~~(i)~~) (A) The person's compensation is the ultimate
13 obligation of the property owner and not the property manager; (~~(ii)~~)
14 (B) the property manager is liable for payment only as agent of the
15 owner; and (~~(iii)~~) (C) the property manager is the agent of the owner
16 with respect to the on-site personnel and that all actions, including,
17 but not limited to, hiring, firing, compensation, and conditions of
18 employment, taken by the property manager with respect to the on-site
19 personnel are subject to the approval of the property owner.

20 (b) "Nonprofit property management company" means a property
21 management company that is exempt from tax under 26 U.S.C. Sec. 501(c)
22 of the federal internal revenue code, as it exists on January 1, 2010.

23 (c) "Housing authority" means a city or county housing authority
24 created pursuant to chapter 35.82 RCW.

25 **Sec. 1202.** RCW 82.04.394 and 2010 c 106 (E2SHB 1597) s 209 are
26 each amended to read as follows:

27 (1) This chapter does not apply to:

28 (a) Amounts received by a nonprofit property management company
29 from the owner of a property for gross wages and benefits paid directly
30 to or on behalf of on-site personnel from property management trust
31 accounts that are required to be maintained under RCW 18.85.285; or

32 (b) Amounts received by a property management company from a
33 housing authority for gross wages and benefits paid directly to or on
34 behalf of on-site personnel from property management trust accounts
35 that are required to be maintained under RCW 18.85.285.

36 (2) (~~As used in~~) The definitions in this subsection apply to this
37 section((τ)).

1 gallons at the rate of one dollar and thirty cents per barrel of
2 thirty-one gallons.

3 (b) Any brewery or beer distributor whose applicable tax payment is
4 not postmarked by the twentieth day following the month of sale will be
5 assessed a penalty at the rate of two percent per month or fraction
6 thereof. Beer and strong beer shall be sold by breweries and
7 distributors in sealed barrels or packages.

8 (c) The moneys collected under this subsection shall be distributed
9 as follows: (i) Three-tenths of a percent shall be distributed to
10 border areas under RCW 66.08.195; and (ii) of the remaining moneys:
11 (A) Twenty percent shall be distributed to counties in the same manner
12 as under RCW 66.08.200; and (B) eighty percent shall be distributed to
13 incorporated cities and towns in the same manner as under RCW
14 66.08.210.

15 (d) Any licensed retailer authorized to purchase beer from a
16 certificate of approval holder with a direct shipment endorsement or a
17 brewery or microbrewery shall make monthly reports to the liquor
18 control board on beer purchased during the preceding calendar month in
19 the manner and upon such forms as may be prescribed by the board.

20 (2) An additional tax is imposed on all beer and strong beer
21 subject to tax under subsection (1) of this section. The additional
22 tax is equal to two dollars per barrel of thirty-one gallons. All
23 revenues collected during any month from this additional tax shall be
24 deposited in the state general fund by the twenty-fifth day of the
25 following month.

26 (3)(a) An additional tax is imposed on all beer and strong beer
27 subject to tax under subsection (1) of this section. The additional
28 tax is equal to ninety-six cents per barrel of thirty-one gallons
29 through June 30, 1995, two dollars and thirty-nine cents per barrel of
30 thirty-one gallons for the period July 1, 1995, through June 30, 1997,
31 and four dollars and seventy-eight cents per barrel of thirty-one
32 gallons thereafter.

33 (b) The additional tax imposed under this subsection does not apply
34 to the sale of the first sixty thousand barrels of beer each year by
35 breweries that are entitled to a reduced rate of tax under 26 U.S.C.
36 Sec. 5051, as existing on July 1, 1993, or such subsequent date as may
37 be provided by the board by rule consistent with the purposes of this
38 exemption.

1 (c) All revenues collected from the additional tax imposed under
2 this subsection (3) shall be deposited in the state general fund.

3 (4) An additional tax is imposed on all beer and strong beer that
4 is subject to tax under subsection (1) of this section that is in the
5 first sixty thousand barrels of beer and strong beer by breweries that
6 are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as
7 existing on July 1, 1993, or such subsequent date as may be provided by
8 the board by rule consistent with the purposes of the exemption under
9 subsection (3)(b) of this section. The additional tax is equal to one
10 dollar and forty-eight and two-tenths cents per barrel of thirty-one
11 gallons. By the twenty-fifth day of the following month, three percent
12 of the revenues collected from this additional tax shall be distributed
13 to border areas under RCW 66.08.195 and the remaining moneys shall be
14 transferred to the state general fund.

15 (5)(a) From the effective date of this section through June 30,
16 2013, an additional tax is imposed on all beer and strong beer subject
17 to tax under subsection (1) of this section. The additional tax is
18 equal to fifteen dollars and fifty cents per barrel of thirty-one
19 gallons.

20 (b) The additional tax imposed under this subsection does not apply
21 to the sale of the first sixty thousand barrels of beer each year by
22 breweries that are entitled to a reduced rate of tax under 26 U.S.C.
23 Sec. 5051 of the federal internal revenue code, as existing on July 1,
24 1993, or such subsequent date as may be provided by the board by rule
25 consistent with the purposes of this exemption.

26 (c) All revenues collected from the additional tax imposed under
27 this subsection shall be deposited in the state general fund.

28 (6) The board may make refunds for all taxes paid on beer and
29 strong beer exported from the state for use outside the state.

30 ~~((+6))~~ (7) The board may require filing with the board of a bond
31 to be approved by it, in such amount as the board may fix, securing the
32 payment of the tax. If any licensee fails to pay the tax when due, the
33 board may forthwith suspend or cancel his or her license until all
34 taxes are paid.

35 **PART XIV**

36 **Temporarily Imposing Taxes on Carbonated Beverages**

1 NEW SECTION. **Sec. 1401.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1)(a) "Carbonated beverage" means any packaged nonalcoholic liquid
5 intended for human consumption that contains carbonation by natural or
6 artificial means and any of the following substances: Caffeine,
7 extracts, fruit juice or concentrated fruit juice, herbs, sweeteners,
8 or syrup. "Packaged" includes cans, bottles, and other similar sealed
9 containers. "Syrup" means a concentrated mixture in either liquid or
10 powdered form that contains sugar or a sugar substitute and that is an
11 ingredient used to make carbonated beverages.

12 (b) "Carbonated beverage" does not include carbonated bottled
13 water. For the purpose of this subsection, "bottled water" has the
14 same meaning as provided in section 901 of this act.

15 (2) "Ounce" means United States fluid ounce.

16 (3) "Previously taxed carbonated beverages" means carbonated
17 beverages to which the tax under this chapter has been previously
18 imposed.

19 (4) Except for terms defined in this section, the definitions in
20 chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

21 NEW SECTION. **Sec. 1402.** (1) From the effective date of this
22 section through June 30, 2013, a tax is imposed on every person for the
23 privilege of selling, at wholesale or retail, carbonated beverages in
24 this state. The rate of the tax is equal to two cents per twelve
25 ounces of carbonated beverages sold in this state.

26 (2)(a) In calculating the amount of tax due under this section, if
27 the total amount of carbonated beverages sold in this state during the
28 reporting period is not a whole number, the taxable quantity must be
29 rounded as provided in (b) of this subsection.

30 (b) For a fraction of an ounce that is equal to or greater than
31 one-half ounce, the taxable quantity must be rounded up to the nearest
32 ounce. For a fraction of an ounce that is less than one-half ounce,
33 the taxable quantity must be rounded down to the nearest ounce.

34 (3) Chapter 82.32 RCW applies to the tax imposed in this section.
35 The tax reporting frequency for the tax imposed in this section must
36 coincide with the taxpayer's reporting frequency for the tax imposed in
37 chapter 82.04 RCW.

1 (4) The department may require taxpayers to report the taxable
2 quantity of carbonated beverages in units of measure other than ounces.

3 (5) The tax imposed in this section is in addition to all other
4 taxes imposed in this title on the same taxable event.

5 NEW SECTION. **Sec. 1403.** (1) The tax imposed in this chapter does
6 not apply to any successive sale of previously taxed carbonated
7 beverages.

8 (2) Any person claiming the exemption provided in this section must
9 maintain documentation establishing that the carbonated beverages were
10 previously taxed under this chapter. The documentation may be in the
11 form of information on the invoice, or certification from the previous
12 seller, stating: (a) That all or a specific stated portion of the
13 carbonated beverages were previously subject to the tax imposed in this
14 chapter; and (b) the amount of tax remitted or to be remitted to the
15 department in respect of the carbonated beverages.

16 NEW SECTION. **Sec. 1404.** (1) For each calendar year, the tax
17 imposed in this chapter does not apply in respect to the first ten
18 million dollars of carbonated beverages sold in this state by any
19 bottler as measured by the gross proceeds of sales of carbonated
20 beverages at retail and wholesale by the bottler. If a bottler is
21 affiliated with any other bottler or distributor, the ten million
22 dollar threshold for the exemption in this subsection (1) is based on
23 the combined gross proceeds of sales by all affiliated persons from all
24 sales at wholesale and retail of carbonated beverages in this state
25 during the calendar year.

26 (2) Successive sales by any person of carbonated beverages exempt
27 under subsection (1) of this section are also exempt from the tax
28 imposed in this chapter. Any person claiming the exemption provided in
29 this subsection (2) must maintain documentation establishing that the
30 carbonated beverages were previously sold in this state by a person
31 exempt under subsection (1) of this section. The documentation may be
32 in the form of information on the invoice, or certification from the
33 previous seller, stating that the carbonated beverages were previously
34 exempt under subsection (1) of this section.

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

1 (a) "Affiliated" has the same meaning as provided in section 110 of
2 this act.

3 (b) "Bottler" means a person who bottles, cans, or otherwise
4 packages carbonated beverages in beverage containers.

5 (c) "Distributor" means a person, other than a bottler, that makes
6 sales at wholesale of carbonated beverages.

7 NEW SECTION. **Sec. 1405.** The tax imposed in this chapter does not
8 apply to any activity or person that the state is prohibited from
9 taxing under the Constitution of this state or the Constitution or laws
10 of the United States.

11 NEW SECTION. **Sec. 1406.** This part constitutes a new chapter in
12 Title 82 RCW.

13 **PART XV**
14 **Limiting the Bad Debt Deduction**

15 NEW SECTION. **Sec. 1501.** The legislature intends with sections
16 1502 and 1503 of this act to supersede the holding of the supreme court
17 of the state of Washington in *Puget Sound National Bank v. Department*
18 *of Revenue*, 123 Wn.2d 284 (1994).

19 **Sec. 1502.** RCW 82.08.037 and 2007 c 6 s 102 are each amended to
20 read as follows:

21 (1) A seller is entitled to a credit or refund for sales taxes
22 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
23 166, as amended or renumbered as of January 1, 2003.

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

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

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

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

30 (d) Repossessed property.

31 (3) If a credit or refund of sales tax is taken for a bad debt and
32 the debt is subsequently collected in whole or in part, the tax on the

1 amount collected must be paid and reported on the return filed for the
2 period in which the collection is made.

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

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

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

16 (7) A person's right to claim a credit or refund under this section
17 is not assignable. No person other than the original seller in the
18 transaction that generated the bad debt or, as provided in subsection
19 (5) of this section, a certified service provider, is entitled to claim
20 a credit or refund under this section. If the original seller in the
21 transaction that generated the bad debt has sold or assigned the debt
22 instrument to a third party with recourse, the original seller may
23 claim a credit or refund under this section only after the debt
24 instrument is reassigned by the third party to the original seller.

25 **Sec. 1503.** RCW 82.12.037 and 2007 c 6 s 103 are each amended to
26 read as follows:

27 (1) A seller is entitled to a credit or refund for use taxes
28 previously paid on bad debts, as that term is used in 26 U.S.C. Sec.
29 166, as amended or renumbered as of January 1, 2003.

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

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

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

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

36 (d) Repossessed property.

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

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

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

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

18 (7) A person's right to claim a credit or refund under this section
19 is not assignable. No person other than the original seller in the
20 transaction that generated the bad debt or, as provided in subsection
21 (5) of this section, a certified service provider, is entitled to claim
22 a credit or refund under this section. If the original seller in the
23 transaction that generated the bad debt has sold or assigned the debt
24 instrument to a third party with recourse, the original seller may
25 claim a credit or refund under this section only after the debt
26 instrument is reassigned by the third party to the original seller.

27 PART XVI

28 Data Centers

29 **Sec. 1601.** RCW 82.08.--- and 2010 1st sp.s. c 1 (ESSB 6789) s 2
30 are each amended to read as follows:

31 (1) An exemption from the tax imposed by RCW 82.08.020 is provided
32 for sales to qualifying businesses of eligible server equipment to be
33 installed, without intervening use, in an eligible computer data
34 center, and to charges made for labor and services rendered in respect
35 to installing eligible server equipment. The exemption also applies to
36 sales to qualifying businesses of eligible power infrastructure,

1 including labor and services rendered in respect to constructing,
2 installing, repairing, altering, or improving eligible power
3 infrastructure.

4 (2)(a) In order to claim the exemption under this section, a
5 qualifying business must submit an application to the department for an
6 exemption certificate. The application must include the information
7 necessary, as required by the department, to determine that a business
8 qualifies for the exemption under this section. The department must
9 issue exemption certificates to qualifying businesses. The department
10 may assign a unique identification number to each exemption certificate
11 issued under this section.

12 (b) A qualifying business claiming the exemption under this section
13 must present the seller with an exemption certificate in a form and
14 manner prescribed by the department. The seller must retain a copy of
15 the certificate for the seller's files.

16 (3)(a) (~~(A qualifying business must establish)~~) Within six years of
17 the (~~(first day of the calendar quarter in which the business first~~
18 ~~receives an exemption under this section or section 3 of this act that~~
19 ~~it has)~~) date that the department issued an exemption certificate under
20 this section to a qualifying business with respect to an eligible
21 computer data center, the qualifying business must establish that net
22 employment at the eligible computer data center has increased
23 (~~(employment in a computer data center)~~) by a minimum of:

24 (i) Thirty-five family wage (~~(jobs from the date the eligible~~
25 ~~computer data center first became operational)~~) employment positions;
26 or

27 (ii) Three family wage employment positions for each twenty
28 thousand square feet of space or less that is newly dedicated to
29 housing working servers at the eligible computer data center. For
30 qualifying businesses that lease space at an eligible computer data
31 center, the number of family wage employment positions that must be
32 increased under this subsection (3)(a)(ii) is based only on the space
33 occupied by the lessee in the eligible computer data center.

34 (b) In calculating the net increase in family wage employment
35 positions:

36 (i) The owner of an eligible computer data center, in addition to
37 its own net increase in family wage employment positions, may include:

1 (A) The net increase in family wage employment positions employed
2 by qualifying businesses leasing space within the eligible computer
3 data center from the owner; and

4 (B) The net increase in family wage employment positions described
5 in (c)(ii)(B) of this subsection (3).

6 (ii)(A) Lessees of the owner of an eligible computer data center,
7 in addition to their own net increase in family wage employment
8 positions, may include:

9 (I) A portion of the net increase in family wage employment
10 positions employed by the owner; and

11 (II) A portion of the net increase in family wage employment
12 positions described in (c)(ii)(B) of this subsection (3).

13 (B) The portion of the net increase in family wage employment
14 positions to be counted under this subsection (3)(b)(ii) by each lessee
15 must be in proportion to the amount of space in the eligible computer
16 data center occupied by the lessee compared to the total amount of
17 space in the eligible computer data center occupied by all lessees that
18 are qualifying businesses.

19 (c)(i) For purposes of this subsection, family wage ((jobs))
20 employment positions are new permanent employment positions requiring
21 forty hours of weekly work, or their equivalent, on a full-time basis
22 at the eligible computer data center and ((paying)) receiving a wage
23 equivalent to or greater than one hundred fifty percent of the per
24 capita personal income of the county in which the qualified project is
25 located. ((The qualifying business must provide)) An employment
26 position may not be counted as a family wage employment position unless
27 the employment position is entitled to health insurance coverage ((for
28 employees)) provided by the employer of the employment position. For
29 purposes of this subsection (3)(c), "new permanent employment position"
30 means an employment position that did not exist or that had not
31 previously been filled as of the date that the department issued an
32 exemption certificate to the owner or lessee of an eligible computer
33 data center, as the case may be.

34 (ii)(A) Family wage employment positions include positions filled
35 by employees of the owner of the eligible computer data center and by
36 employees of qualifying businesses leasing space from the owner of the
37 eligible computer data center.

1 (B) Family wage employment positions also include individuals
2 performing work at an eligible computer data center as an independent
3 contractor hired by the owner of the eligible computer data center or
4 as an employee of an independent contractor hired by the owner of the
5 eligible computer data center, if the work is necessary for the
6 operation of the computer data center, such as security and building
7 maintenance, and provided that all of the requirements in (c)(i) of
8 this subsection (3) are met.

9 ~~((b))~~ (d) All previously exempted sales and use taxes are
10 immediately due and payable for a qualifying business that does not
11 meet the requirements of this subsection.

12 (4) A qualifying business claiming an exemption under this section
13 or RCW 82.12.--- (section 3, chapter 1 (ESSB 6789), Laws of 2010 1st
14 sp. sess.) must complete an annual report with the department as
15 required under section 103, chapter 114 (SHB 3066), Laws of 2010.

16 (5)(a) The exemption provided in this section does not apply to:

17 (i) Any person who has received the benefit of the deferral program
18 under chapter 82.60 RCW on: (A) The construction, renovation, or
19 expansion of a structure or structures used as a computer data center;
20 or (B) machinery or equipment used in a computer data center; and

21 (ii) Any person affiliated with a person within the scope of (a)(i)
22 of this subsection (5). For purposes of this subsection, "affiliated"
23 means that one person has a direct or indirect ownership interest of at
24 least twenty percent in another person.

25 (b) If a person claims an exemption under this section and
26 subsequently receives the benefit of the deferral program under chapter
27 82.60 RCW on either the construction, renovation, or expansion of a
28 structure or structures used as a computer data center or machinery or
29 equipment used in a computer data center, the person must repay the
30 amount of taxes exempted under this section. Interest as provided in
31 chapter 82.32 RCW applies to amounts due under this section until paid
32 in full.

33 (6) For purposes of this section the following definitions apply
34 unless the context clearly requires otherwise:

35 (a)(i) "Computer data center" means a facility comprised of one or
36 more buildings, which may be comprised of multiple businesses,
37 constructed or refurbished specifically, and used primarily, to house
38 working servers, where the facility has the following characteristics:

1 (A) Uninterruptible power supplies, generator backup power, or both;
2 (B) sophisticated fire suppression and prevention systems; and (C)
3 enhanced physical security, such as: Restricted access to the facility
4 to selected personnel; permanent security guards; video camera
5 surveillance; an electronic system requiring passcodes, keycards, or
6 biometric scans, such as hand scans and retinal or fingerprint
7 recognition; or similar security features.

8 (ii) For a computer data center comprised of multiple buildings,
9 each separate building constructed or refurbished specifically, and
10 used primarily, to house working servers is considered a computer data
11 center if it has all of the characteristics listed in (a)(i)(A) through
12 (C) of this subsection (6).

13 (iii) A facility comprised of one building or more than one
14 building must have a combined square footage of at least one hundred
15 thousand square feet.

16 (b) "Electronic data storage and data management services" include,
17 but are not limited to: Providing data storage and backup services,
18 providing computer processing power, hosting enterprise software
19 applications, and hosting web sites. The term also includes providing
20 services such as e-mail, web browsing and searching, media
21 applications, and other online services, regardless of whether a charge
22 is made for such services.

23 (c)(i) "Eligible computer data center" means a computer data
24 center:

25 (A) Located in a rural county as defined in RCW 82.14.370;

26 (B) Having at least twenty thousand square feet dedicated to
27 housing working servers, where the server space has not previously been
28 dedicated to housing working servers; and

29 (C) For which the commencement of construction occurs after March
30 31, 2010, and before July 1, 2011. For purposes of this section,
31 "commencement of construction" means the date that a building permit is
32 issued under the building code adopted under RCW 19.27.031 for
33 construction of the computer data center. The construction of a
34 computer data center includes the expansion, renovation, or other
35 improvements made to existing facilities, including leased or rented
36 space. "Commencement of construction" does not include soil testing,
37 site clearing and grading, site preparation, or any other related

1 activities that are initiated before the issuance of a building permit
2 for the construction of the foundation of a computer data center.

3 (ii) With respect to facilities in existence on April 1, 2010 that
4 are expanded, renovated, or otherwise improved after March 31, 2010, an
5 eligible computer data center includes only the portion of the computer
6 data center meeting the requirements in (c)(i)(B) of this subsection
7 (6).

8 (d) "Eligible power infrastructure" means all fixtures and
9 equipment necessary for the transformation, distribution, or management
10 of electricity that is required to operate eligible server equipment
11 within an eligible computer data center. The term includes electrical
12 substations, generators, wiring, and cogeneration equipment.

13 (e) "Eligible server equipment" means the original server equipment
14 installed in an eligible computer data center on or after April 1,
15 2010, and replacement server equipment. For purposes of this
16 subsection (6)(e), "replacement server equipment" means server
17 equipment that: (i) Replaces existing server equipment, if the sale or
18 use of the server equipment to be replaced qualified for an exemption
19 under this section or RCW 82.12.--- (section 3, chapter 1 (ESSB 6789),
20 Laws of 2010 1st sp. sess.); and (ii) is installed and put into regular
21 use before April 1, 2018.

22 (f) "Qualifying business" means a business entity that exists for
23 the primary purpose of engaging in commercial activity for profit and
24 that is the owner (~~or lessee~~) of an eligible computer data center or
25 the lessee of at least twenty thousand square feet within an eligible
26 computer data center dedicated to housing working servers, where the
27 server space has not previously been dedicated to housing working
28 servers. The term does not include the state or federal government or
29 any of their departments, agencies, and institutions; tribal
30 governments; political subdivisions of this state; or any municipal,
31 quasi-municipal, public, or other corporation created by the state or
32 federal government, tribal government, municipality, or political
33 subdivision of the state.

34 (g) "Server" means blade or rack-mount server computers used in a
35 computer data center exclusively to provide electronic data storage and
36 data management services for internal use by the owner or lessee of the
37 computer data center, for clients of the owner or lessee of the

1 computer data center, or both. "Server" does not include personal
2 computers.

3 (h) "Server equipment" means the server chassis and all computer
4 hardware contained within the server chassis. "Server equipment" also
5 includes computer software necessary to operate the server. "Server
6 equipment" does not include the racks upon which the server chassis is
7 installed, and computer peripherals such as keyboards, monitors,
8 printers, mice, and other devices that work outside of the computer.

9 (7) This section expires April 1, 2018.

10 **Sec. 1602.** RCW 82.12.--- and 2010 1st sp.s. c 1 (ESSB 6789) s 3
11 are each amended to read as follows:

12 (1) An exemption from the tax imposed by RCW 82.12.020 is provided
13 for the use by qualifying businesses of eligible server equipment to be
14 installed, without intervening use, in an eligible computer data
15 center, and to the use of labor and services rendered in respect to
16 installing such server equipment. The exemption also applies to the
17 use of power infrastructure, including labor and services rendered in
18 respect to installing, repairing, altering, or improving such
19 infrastructure.

20 (2) A qualifying business is not eligible for the exemption under
21 this section unless the department issued an exemption certificate to
22 the qualifying business for the exemption provided in RCW 82.08.---
23 (section 2, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.).

24 (3)(a) The exemption provided in this section does not apply to:

25 (i) Any person who has received the benefit of the deferral program
26 under chapter 82.60 RCW on: (A) The construction, renovation, or
27 expansion of a structure or structures used as a computer data center;
28 or (B) machinery or equipment used in a computer data center; and

29 (ii) Any person affiliated with a person within the scope of (a)(i)
30 of this subsection (3). For purposes of this subsection, "affiliated"
31 means that one person has a direct or indirect ownership interest of at
32 least twenty percent in another person.

33 (b) If a person has received the benefit of the exemption under
34 this section and subsequently receives the benefit of the deferral
35 program under chapter 82.60 RCW on either the construction, renovation,
36 or expansion of a structure or structures used as a computer data
37 center or machinery or equipment used in a computer data center, the

1 person must repay the amount of taxes exempted under this section.
2 Interest as provided in chapter 82.32 RCW applies to amounts due under
3 this subsection (3)(b) until paid in full. A person is not required to
4 repay taxes under this subsection with respect to property and services
5 for which the person is required to repay taxes under RCW 82.08.---
6 (section 2, chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.).

7 (4) The definitions and requirements in RCW 82.08.--- (section 2,
8 chapter 1 (ESSB 6789), Laws of 2010 1st sp. sess.) apply to this
9 section.

10 (5) This section expires April 1, 2018.

11 PART XVII

12 Miscellaneous Provisions

13 NEW SECTION. **Sec. 1701.** If a court of competent jurisdiction, in
14 a final judgment not subject to appeal, adjudges any provision of
15 section 104(1)(c) of this act unconstitutional or otherwise invalid,
16 Part I of this act is null and void in its entirety.

17 NEW SECTION. **Sec. 1702.** Part I of this act applies with respect
18 to gross income of the business, as defined in RCW 82.04.080, including
19 gross income from royalties as defined in RCW 82.04.2907, generated on
20 and after June 1, 2010. For purposes of calculating the thresholds in
21 section 104(1)(c) of this act for the 2010 tax year, property, payroll,
22 and receipts are based on the entire 2010 tax year.

23 NEW SECTION. **Sec. 1703.** Except as provided in section 202 of this
24 act, section 201 of this act applies to tax periods beginning January
25 1, 2006.

26 NEW SECTION. **Sec. 1704.** Sections 402 and 702 of this act apply
27 both retroactively and prospectively.

28 NEW SECTION. **Sec. 1705.** In accordance with Article VIII, section
29 5 of the state Constitution, sections 702 and 1704 of this act do not
30 authorize refunds of business and occupation tax validly collected
31 before July 1, 2010, on amounts received by an individual from a

1 corporation as compensation for serving as a member of that
2 corporation's board of directors.

3 NEW SECTION. **Sec. 1706.** Section 402 of this act does not affect
4 any final judgments, not subject to appeal, entered by a court of
5 competent jurisdiction before the effective date of this section.

6 NEW SECTION. **Sec. 1707.** Except as provided in section 1701 of
7 this act, if any provision of this act or its application to any person
8 or circumstance is held invalid, the remainder of the act or the
9 application of the provision to other persons or circumstances is not
10 affected.

11 NEW SECTION. **Sec. 1708.** Except as otherwise provided in this act,
12 this act is necessary for the immediate preservation of the public
13 peace, health, or safety, or support of the state government and its
14 existing public institutions, and takes effect May 1, 2010.

15 NEW SECTION. **Sec. 1709.** Parts III and XIII and sections 101
16 through 106, 108 through 112, 501 through 503, 505, 507, 510 through
17 514, 516 through 519, 901, 903 through 911, and 1201 of this act are
18 necessary for the immediate preservation of the public peace, health,
19 or safety, or support of the state government and its existing public
20 institutions, and take effect June 1, 2010.

21 NEW SECTION. **Sec. 1710.** Sections 106, 901, and 1201 of this act
22 expire July 1, 2010.

23 NEW SECTION. **Sec. 1711.** Sections 503, 505, and 514 of this act
24 expire June 10, 2010.

25 NEW SECTION. **Sec. 1712.** Sections 504, 506, and 515 of this act
26 are necessary for the immediate preservation of the public peace,
27 health, or safety, or support of the state government and its existing
28 public institutions, and take effect June 10, 2010.

29 NEW SECTION. **Sec. 1713.** Parts VI, VII, and XIV and sections 107,
30 702, 902, and 1202 of this act are necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and take effect
3 July 1, 2010.

4 NEW SECTION. **Sec. 1714.** Section 507 of this act expires July 13,
5 2010.

6 NEW SECTION. **Sec. 1715.** Section 508 of this act takes effect July
7 13, 2010.

8 NEW SECTION. **Sec. 1716.** Section 508 of this act expires July 1,
9 2011.

10 NEW SECTION. **Sec. 1717.** Section 509 of this act takes effect July
11 1, 2011.

12 NEW SECTION. **Sec. 1718.** Section 1001 of this act applies
13 prospectively only.

14 NEW SECTION. **Sec. 1719.** Sections 1502 and 1503 of this act apply
15 to claims for credit or refund filed with the department of revenue
16 after June 30, 2010.

--- END ---